Vera Effigies EDVARDI COKE
Equitis aurati nuper Capitalis
Iusticiarij ad placita coram Rege tenenda
assig- nati.

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The First Part

OF THE

INSTITUTES

Of the LAWS of

ENGLAND.

OR,

A Commentary upon LITTLETON, not the name of the Author only, but of the LAW it self.

MARTIAL.

Quid te vana juvant miseræ ludibria Chartæ?
Hoc lege, quod possit dicere jure meum est.

CICERO.

Major hæreditas venit unicuique nostrum à Jure & Legibus, quàm à Parentibus.

Hæc ego grandævus posui tibi, candide Lector.

Authore EDWARDO COKE Milite.

The Seventh Edition carefully Corrected,

LONDON,

Printed by John Streater, James Flesher, and Henry Twyford, Assigns of Richard Atkins and Edward Atkins, Esquires.

And are to be sold by *George Sawbridge, John Place, John Bellinger, William Place, Thomas Basset, Robert Pawlet, Christopher Wilkinson, Thomas Dring, William Jacob, Allen Banks, Ch. Harper, John Amery, John Poole, John Leigh,* MDCLXX.

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DEO, PATRIÆ, TIBI.

Proœmium.

OUR Author, a Gentleman of an ancient and fair deſcended Family *de Littleton*, took his name of a Town ſo called, as that famous chief Juſtice Sir *John de Markham*, and divers of our Profeſſion, and others, have done.

The name and degree of our Author.

Thomas de Littleton, Lord of Frankley, had iſſue *Elizabeth* his onely child, and did bear the arms of his Anceſtors, *viz.* Argent, a Cheuron between three Eſcalop ſhels Sable. The bearing hereof is very ancient and honourable, for the Senators of Rome did wear bracelets of Eſcalop ſhels about their arms, and the Knights of the Honourable Order of S. *Michael* in France, do wear a collar of Gold in the form of Eſcalop ſhels at this day. Hereof much more might be ſaid, but it belongs unto others.

His Arms.

With this *Elizabeth* married *Thomas Weſtcote* Eſquire, the Kings ſervant in Court, a Gentleman anciently deſcended, who bare Argent, a Bend between two Cotiſſes Sable, a Bordure engrayled Gules, Bezanty.

Inſtituted by *Lewis* the eleventh King of France, 9 *Ed.* 4. 1469. *Thomas Weſtcott.*

But ſhe being fair and of a noble ſpirit, and having large poſſeſſions and inheritance from her Anceſtors *de Littleton*, and from her mother the daughter and heir of *Richard de Quatermaine*, and other her Anceſtors, (ready means in time to work her own deſire) reſolved to continue the honour of her name (as did the daughter and heir of *Charleton* with one of the ſons of *Knightly*, and divers others) and therefore prudently, whilſt it was in her own power, provided by *Weſtcotes* aſſent before marriage, that her iſſue inheritable ſhould be called by the name of *de Littleton*. Theſe two had iſſue four ſons, *Thomas*, *Nicholas*, *Edmund* and *Guy*, and four daughters.

Thomas the eldeſt was our Author, who bare his fathers Chriſtian name *Thomas*, and his mothers ſurname *de Littleton*, and the arms *de Littleton* alſo; and ſo doth his poſterity bear both Name and Arms to this day.

Our Auth r bare his Mo-ters ſurname.

Camden in his *Britannia* ſaith thus; *Thomas Littleton*, alias *Weſtcote*, the famous Lawyer, to whoſe Treatiſe of Tenures the Students of the Common-Law are no leſs beholding, then the Civilians to *Juſtinians* Inſtitutes.

Camden Pſal. 92. 11. The juſt ſhall flouriſh like the Palm tree, and ſpread abroad like the Cedars in Libanus.

The dignity of this fair deſcended Family *de Littleton*, hath grown up together and ſpread it ſelf abroad by matches, with many other ancient and Honourable Families, to many worthy and fruitful branches, whoſe poſterity flouriſh at this day, and quartereth many fair Coats, and * enjoyeth fruitful and opule nt inheritances thereby.

* The beſt kind of quartering of Arms.

He was of the Inner Temple, and read learnedly upon the Statute of *W.2. De donis conditionalibus*, which we have. He was afterward called *ad ſtatum & gradum Servientis ad Legem*, and was Steward of the Court of the Marſhalſey of the Kings houſhold, and for his worthineſs was made by King *H.6.* his Serjeant, and rode Juſtice of Aſſiſe the Northern Circuit, which places he held under King *E.* 4. until he in the ſixth year of his Reign conſtituted him one of the Judges of the Court of Common Pleas, and then he rode Northampton-ſhire Circuit. The ſame King in the 15. year of his Reign, with the Prince, and other Nobles and Gentlemen of ancient bloud, honoured him with Knighthood of the Bath.

Kings Serjeant *Rot. Pat.* 33 *H.* 6. *part* 1. *M.* 16. *Mich.*34. *H.6. fol.*3 a.

Judge of the Common Pleas. *Rot. Pat.* 6 *E.*4. *Part* 1. *M.*15.

Knight of the Bath, 15 *E.* 4.

He compiled this Book when he was Judge, after the fourteenth year of the Reign of King *E.*4. but the certain time we cannot yet attain unto, but (as we conceive) it was not long before his death, becauſe it wanted his laſt hand, for that Tenant by Elegit, Statute Merchant, & Staple, were in the table of the firſt printed Book, and yet he never wrote of them.

When he wrote this Book. 14 *E.*4. *tit. Garranty* 5. *Litt. Sect.*692.729. *&* 730.

Our Author in compoſing this Work had great furtherance, in that he flouriſhed in the time of many famous and expert Sages of the Law. *a* Sir *Richard Newton*, *b* Sir *John Priſot*, *c* Sir *Robert Danby*, *d* Sir *Thomas Brian*, *e* Sir *Pierce Ardern*, *f* Sir *Richard Choke*, *g Walter Moyle*, *h William Paſton*, *i Robert Danvers*, *k William Aſcough*, and other Juſtices of the Court of Common Pleas: And of the Kings Bench, *l* Sir *John June*, *m* Sir *John Hody*, *n* Sir *John Forteſcue*, *o* Sir *John Markham*, *p* Sir *Thomas Billing*, and other excellent men flouriſhed in his time.

The deceaſes of his Contemporaries.

a He died 27 *H.6.*

b He died 39 *H.6.*

c Died 11 *E.*4.

d Died 16 *H.*7.

e Died 7 *E.*4.

f Over-lived our Author.

g Survived him alſo.

h Died 23 *H.6.*

i Survived our Author.

k Died 33 *H.6.*

l Died 18 *H.6.*

m Died 20 *H.6.*

n Removed 1 *E.*4.

o Removed 8 *E.*4.

p Died 21 *E.*4.

And of worldly bleſſings I account it not the leaſt, that in the beginning of my ſtudy of the Laws of this Realm, the Courts of Juſtice, both of Equity and of Law, were furniſhed with men of excellent Judgment, Gravity, and Wiſdome; As in the Chancery, Sir *Nicholas Bacon*, and after him Sir *Thomas Bromley*. In the Exchequer Chamber, the Lord *Burghley*, Lord high Treaſurer of England, and Sir *Walter Mildmay* Chancellor of the Exchequer. In the Kings Bench, Sir *Chriſtopher Wray*, and after him Sir *John Popham*. In the Common Pleas, Sir *James Dyer*, and after him Sir *Edmund Anderſon*. In the Court of Exchequer, Sir *Edward Saunders*, after him Sir *John Jefferey*, and after him Sir *Roger Manwood*, men famous (amongſt many others) in their ſeveral places, and flouriſhed, and were all honoured and preferred by that thrice noble and vertuous Queen *Elizabeth* of ever bleſſed memory. Of theſe reverend Judges, and others their Aſſociates, I muſt ingeniouſly confeſs, that in her Reign I learned many things which in theſe Inſtitutes I have publiſhed: And of this Queen I may ſay, that as the Roſe is the queen of flowers, and ſmelleth more ſweetly when it is pluckt from the branch: ſo I may ſay and juſtifie, that ſhe by juſt deſert was the Queen of Queens, and of Kings alſo, for Religion, Piety, Magnanimity, and Juſtice; who now by remembrance thereof, ſince Almighty God gathered her to himſelf, is of greater honour and renown, then when ſhe was living in this world. You cannot queſtion what Roſe I mean; for take the Red or the White, ſhe was, not onely by Royal deſcent, and inherent Birthright, but by Roſial beauty alſo, heir to both.

Queen *Elizabeth.*

And though we wish by our labours (which are but *Cunabula Legis*, the cradles of the Law) Delight and Profit to all the Students of the Law, in their beginning of their study, (to whom the first part of the Institutes is intended) yet principally to my loving friends, the Students of the honourable and worthy Societies of the Inner Temple, and Cliffords Inne, and of Lions Inne also, where I was sometime Reader. And yet of them more particularly to such as have been of that famous University of *Cambridge*, *Alma mea mater*. And to my much honoured and beloved Allies and Friends of the Counties of *Norfolk*, my dear and native Country; and to *Suffolk*, where I passed my middle age; and of *Buckinghamshire*, where in my old age I live. In which Counties, we out of former Collections compiled these Institutes. But now return we again to our Author.

Inner Temple
Cliffords Inne.
Lions Inne.

He married with *Joban* one of the daughters and coheirs of *William Burley* of *Broomscroft* Castel in the County of *Salop*, a Gentleman of ancient descent, and bare the Arms of his Family, Argent, a Fess Checkie Or and Azure, upon a Lion Rampant Sable, armed Gules. And by her had three sons, Sir *William*, *Richard* the Lawyer, and *Thomas*.

His marriage.

His issue.

In his life time, he, as a loving Father and a wise man, provided matches for these three sons, in vertuous and ancient Families, that is to say, for his Son Sir *William*, *Ellen* Daughter and Coheir of *Thomas Welsh* Esquire, who by her had issue *Joban* his onely child, married to Sir *John Aston* of *Tixall*, Knight: And for the second wife of Sir *William*, *Mary* the Daughter of *William Whittington* Esquire, whose posterity in Worcestershire, flourish to this day. For *Richard Littleton* his second Son, to whom he gave good possessions of inheritance, *Alice* Daughter and heir of *William Winsbury* of *Pilleton-Hall* in the County of *Stafford*, Esquire, whose posterity prosper in Staffordshire to this day. And for *Thomas* his third Son, to whom he gave good possessions of inheritance, *Anne* Daughter and heir of *John Botreaux* Esquire, whose posterity in Shropshire continue prosperously to this day. Thus advanced he his posterity, and his posterity by imitation of his Vertues, have honoured him.

The establishment of his posterity, by the matches of his three sons, with Vertue and good Blood.

He gave possessions of inheritance to his younger Sons, for their better advancement.

He made his last Will and Testament thee 22. day of *August*, in the 21. year of the Reign of King *Edward* the fourth, whereof he made his three Sons, a Parson, a Vicar, & a servant of his, Executors; & constituted Supervisor thereof, his true & faithful Friend *John Alcock* Doctor of Law, of the famous University of *Cambridge*, then Bishop of *Worcester*, a man of singular Piety, Devotion, Chastity, Temperance, and holiness of life, who amongst other of his pious and Charitable works, founded Jesus Colledge in *Cambridge*; a fit and a fast Friend to our honourable & vertuous Judge.

His last Will.

His Executors
His Supervisor.

He left this life in his great and good age, on the 23. day of the moneth of *August*, in the said 21. year of the Reign of King *Edward* the fourth: For it is observed for a special blessing of Almighty God, that few or none of that profession die *Intestatus & improles*, without Will, and without Child; which last Will was proved the 8. of *November* following, in the Prerogative Court of *Canterbury*, for that he had *Bona notabilia* in divers Dioceses. But yet our Author liveth still *in ore omnium juris prudentium*.

His age.
His departure.

Littleton is named in 1 *H.7.* and in 21 *H.7.* Some do hold, that is is no error

1 *H.7. fol.27.*
21 *H.7 fol.30.b.*

ertor either in the Reporter or Printer; but that it was *Richard* the ſon of our Author, who in thoſe days profeſſed the Law, and had read upon the Statute of *W.* 2. *quia multi per malitiam*; and * unto whom his Father dedicated his Book; And this *Richard* died at Pilleton Hall in Staffordſhire, in 9 *H.*8.

W. 2. *cap.* 11.
* See *Littleton* Sect. 640.

His Sepulture.

The body of our Author is honourably interred in the Cathedral Church of Worceſter, under a fair Tomb of Marble, with his Statue or portraiture upon it, together with his own match, and the matches of ſome of his Anceſtors, and with a memorial of his principal titles, and out of the mouth of his ſtatute proceedeth this prayer, *Fili Dei miſerere mei*, which he himſelf cauſed to be made and finiſhed in his life time, and remaineth to this day. His wife *Johan*, Lady *Littleton*, ſurvived him, and left a great inheritance of her Father, and *Ellen* her Mother, daughter and heir of *John Grendon* Eſquire, and other her Anceſtors, to Sir *William Littleton* her ſon.

When this Work was publiſhed.

This Work was not publiſhed in print, either by our Author himſelf, or *Richard* his ſon, or any other, until after the deceaſes both of our Author, and of *Richard* his ſon. For I find it not cited in any Book or Report, before Sir *Anthony Fitzherbert* cited him in his *Natura Brevium*; who publiſhed that Book of his *Natura Brevium* in 26 *H.*8. Which Work of our Author, in reſpect of the excellency thereof, by all probability ſhould have been cited in the Reports of the Reigns of *E.* 5. *R.* 3. *H.* 7. or *H.* 8. or by *S. Jermyn* in his Book of the Doctor and Student, which he publiſhed in the three and twentieth year of *H.*8. if in thoſe days our Authors Book had been printed. And yet you ſhall obſerve, That Time doth ever give greater authority to Works and Writings that are of great and profound learning, then at the firſt they had. The firſt impreſſion that I find of our Authors Book was at Roan in France by *William du Tailier* (for that it was written in French) *Ad inſtantiam Richardi Pinſon*, at the inſtance of *Richard Pinſon* their Printer of King *H.*8. before the ſaid Book of *Natura Brevium* was publiſhed; and therefore upon theſe and other things that we have ſeen, we are of opinion, that it was firſt printed about the four & twentieth year of the Reign of King *H.*8. ſince which time he had been commonly cited, and (as he deſerves) more & more highly eſteemed.

F. N. B. 212. f.

Nota.

When this Work was firſt imprinted.

His Picture.

He that is deſirous to ſee his Picture, may in the Churches of Frankley and Hales Owen, ſee the grave and reverend countenance of our Author, the outward man, but he hath left this Book, as a figure of that higher and nobler part, that is, of the excellent and rare endowments of his mind, eſpecially in the profound knowledge of the fundamental Laws of this Realm. He that diligently reads this his excellent Work, ſhall behold the child and figure of his mind, which the more often he beholds in the viſual line, and well obſerves him, ſhall be juſtly admire the judgment of our Author, and increaſe his love. This onely is deſired, that he had written of other parts of the Law, and ſpecially of the rules of good pleading (the heart-ſtring of the Common Law) wherein he excelled; for of him might the ſaying of our Engliſh Poet be verified,

The firſt to indite and make a thing,
There was no Wight could pinch at his writing.

Chaucer.

So

So far from exception, as none could pinch at it. This skill of good pleading, he highly in this Work commended to his Son, and under his name to all other Students ſons of his Law. He was learned alſo in that Art, which is ſo neceſſary to a compleat Lawyer, I mean of Logick, as you ſhall perceive by reading of theſe Inſtitutes, wherein are obſerved his Syllogiſmes, Inductions, and other Arguments; and his Definitions, Deſcriptions, Diviſions, Etymologies, Derivations, Significations, and the like. Certain it is; that when a great learned man (who is long in making) dieth, much learning dieth with him. *Seneca.*

Good pleading.

Logick.

That which we have formerly written, that this Book is the ornament of the Common Law, and the moſt perfect and abſolute Work that ever was written in any humane Science; and in another place, that which I affirmed and took upon me to maintain againſt all oppoſites, whatſoever, that it is a work of as abſolute perfection in its kind, and as free from error, as any Book that I have known to be written of any humane learning, ſhall to the diligent and obſerving Reader of theſe Inſtitutes be made manifeſt, and we by them (which is but a Commentary upon him) be deemed to have fully ſatisfyed that, which we in former times have ſo confidently affirmed and aſſumed. His greateſt commendation, becauſe it is of greateſt profit to us, is, that by this excellent Work, which he had ſtudiouſly learned of others, he faithfully taught all the Profeſſors of the Law in ſucceeding ages. The victory is not great to overthrow his oppoſites, for there never was any learned man in the Law, that underſtood our Author, but concurred with me in his commendation: *Habet enim juſtam venerationem quicquid excellit*; For whatſoever excelleth hath juſt honour due to it. Such as in words have endeavoured to offer him diſgrace, never underſtood him, and therefore we leave them in their ignorance, and wiſh that by theſe our Labours they may know the truth and be converted. But herein we will proceed no further: For, *Stultum eſt abſurdas opiniones accuratius refellere.* It is meer folly to confute abſurd opinions with too much curioſity. *Ariſtotle.*

The commendation of his Work. *Lib. 2. fol. 67. Epiſt. 10. l. 10.*

Cicero.

And albeit our Author in his three Books cites not many Authorities, yet he holdeth no opinion in any of them, but is proved and approved by theſe two faithfull witneſſes in matter of Law, Authority and Reaſon. Certain it is, when he raiſeth any queſtion, and ſheweth the Reaſon on both ſides, the latter opinion is his own and is conſonant to Law. We have known many of his Caſes drawn in queſtion, but never could find any judgement given againſt any of them, which we cannot affirm of any other Book or Edition of our Law. In the reign of our late Sovereigne Lord King *James* of famous and ever bleſſed memory, it came in queſtion upon a demurrer in Law, whether the releaſe to one treſpaſſer ſhould be available or no to his companion, Sir *Henry Hobart* that honorable Judge, and great Sage of the Law, and thoſe reverend and learned Judges, *Warburton*, *Winch*, and *Nicols*, his companions gave judgement according to the opinion of our Author, and openly ſaid, That they owed ſo great a reverence to *Littleton*, as they would not have his Caſe diſputed or queſtioned: and the like you may find in this part of the

Note.

Mich. 3. Jac. in Communi Banc. inter Cock and Honours.

the Inſtitutes. Thus much (though not ſo much as his due) have we ſpoken of him; both to ſet out his Life, becauſe he is our Authour, and for the imitation of him by others of our Profeſſion.

What is endeavoured by theſe Inſtitutes.

We have in theſe Inſtitutes endeavoured to open the true ſenſe of every of his particular Caſes, and the extent of every of the ſame, either in expreſs words, or by implication, and where any of them are altered by any latter Act of Parliament to obſerve the ſame, and wherein the alteration conſiſteth: certain it is, that there is never a period, nor (for the moſt part) a word, nor an &c. but affordeth excellent matter of learning. But the Module of a Preface cannot expreſs the obſervations that are made in this Work, of the deep Judgement, and notable Invention of our Authour. We have by compariſon of the late and modern Impreſſions with the original print, vindicated our Author from two injuries; Firſt, from divers corruptions in the late and modern prints, and reſtored our Author to his own: Secondly, from all additions and encroachments upon him, that nothing might appear in his Work but his own.

The benefit of theſe Inſtitutes.

Our hope is, that the young Student, who heretofore meeting at the firſt and wraſtling with as difficult terms and matter, as in many years after, was at the firſt diſcouraged as many have been, may by reading theſe Inſtitutes, have the difficulty & darkneſs both of the Matter, and of the Terms and Words of Art in the beginning of his ſtudy facilitated and explained unto him, to the end he may proceed in his ſtudy cheerfully and with delight; and therefore I have termed them Inſtitutes, becauſe my deſire is, they ſhould inſtitute and inſtruct the ſtudious, and guide him in a ready way to the knowledge of the Nationall Laws of *England*.

Wherefore called Inſtitutes.

Wherefore publiſhed in Engliſh.

This part we have (and not without Preſident) publiſhed in Engliſh, for that they are an introduction to the knowledge of the Nationall Laws of the Realm; a Work neceſſary, and yet heretofore not undertaken by any, albeit in all other Profeſſions there are the like. We have left our Author to ſpeak his own language, and have tranſlated him into Engliſh to the end that any of the Nobility, or Gentry of this Realm, or of any other eſtate or profeſſion whatſoever, that will be pleaſed to read him and theſe Inſtitutes, may underſtand the language, wherein they are written.

I cannot conjecture that the generall communicating of theſe Laws in the Engliſh tongue can work any inconvenience, but introduce great profit, ſeeing that *Ignorantia Juris non excuſat*, Ignorance of the Law excuſeth not. And herein I am juſtified by the wiſdome of a Parliament; the words whereof be, *That the Laws and Cuſtomes of this Realm the rather ſhould be reaſonably perceived and known, and better underſtood by the Tongue uſed in this Realm, and by ſo much every man might the better govern himſelf without offending of the Law, and the better keep, ſave, and defend his heritage and poſſeſſions. And in divers Regions and Countries, where the King, the Nobles, and other of the ſaid Realm have been, good governance and full right is done to every man, becauſe that the Laws and Cuſtomes be learned and uſed in the Tongue of the Countrey:* as more at large by the ſaid Act, and the purview thereof may appear: *Et neminem oportet eſſe ſapientiorem Legibus*, No man ought to be wiſer than the Law.

Regula.

36 E. 3. cap. 5.

Regula.

And

And true it is that our Books of Reports and Statutes, in ancient times were written in such French as in those times was commonly spoken and written by the French themselves. But this kind of French that our Author hath used, is most commonly written and read, and very rarely spoken, and therefore cannot be either pure, or well pronounced. Yet the change thereof (having been so long accustomed) should be without any profit, but not without great danger and difficulty; for so many ancient Terms and words drawn from that legal French, are grown to be *Vocabula artis*, Vocables of Art, so apt and significant to express the true sense of the Laws, and are so woven in the Laws themselves, as it is in a manner impossible to change them, neither ought legal terms to be changed.

Our Authors kinde of French.

36 E. 3. ubi supr.

In School Divinity, and amongst the Glossographers and Interpreters of the Civil and Canon Laws, in Logick, and in other liberal Sciences, you shall meet with a whole Army of words, which cannot defend themselves *in Bello Grammaticali*, in the Grammatical War, and yet are more significant, compendious, and effectual to express the true sense of the matter, then if they were expressed in pure Latine.

This Work we have called The first part of the Institutes, for two causes: First, for that our Author is the first Book that our Student taketh in hand. Secondly, for that there are some other parts of Institutes not yet published, (*viz.*) The second part being a Commentary upon the Statute of *Magna Charta*, *Westm.* 1. and other old Statutes. The third Part treateth of Criminal causes and Pleas of the Crown: which three parts we have by the goodness of Almighty God, already finished. The fourth Part we have purposed to be of the Jurisdiction of Courts; but herein we have onely collected some materials towards the raising of so great and honourable a Building. We have by the goodness and assistance of Almighty God brought this twelfth Work to an end; in the eleven Books of our *Reports* we have related the opinions and judgments of others; but herein we have set down our own.

Wherefore called the first part.

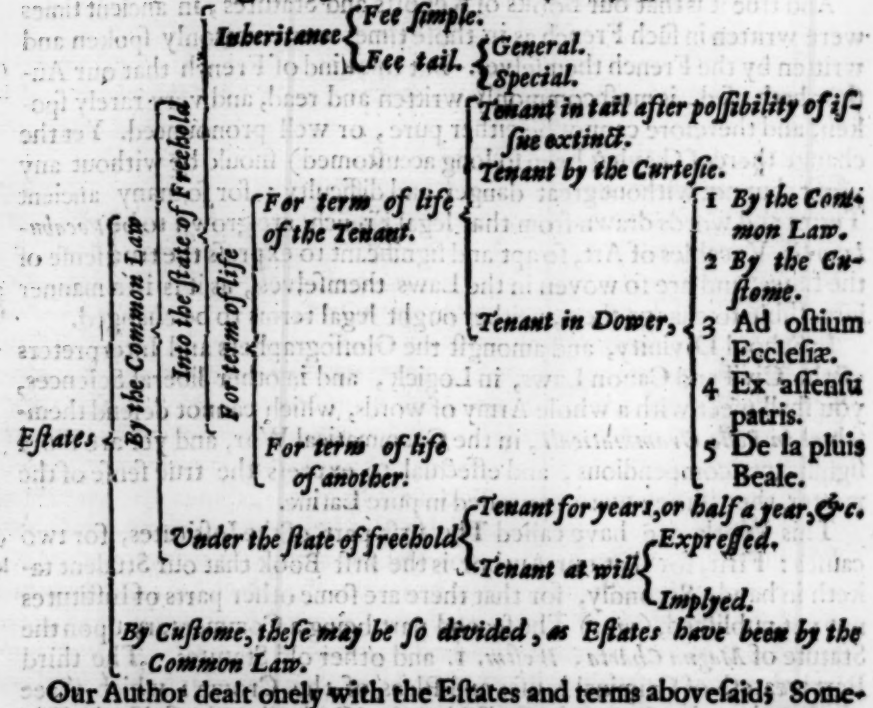
Before I entred into any of these Parts of our Institutes, I acknowledging mine own weakness and want of judgment to undertake so great Works, directed my humble Suit and Prayer to the Author of all Goodness and Wisdome, out of the Book of *Wisdome*: *Pater & Deus misericordiæ, da mihi sedium tuarum assistricem sapientiam, mitte eam de Cœlis sanctis tuis & a sede magnitudinis tuæ, ut mecum sit & mecum laboret, ut sciam quid acceptum sit apud te*; Oh Father and God of mercy, give me wisdome, the Assistant of thy seats; Oh, send her out of thy holy Heavens, and from the seat of thy Greatness, that she may be present with me, and labour with me, that I may know what is pleasing unto thee. *Amen.*

Lib. Sap. ca. 9. Vers. 4, 10.

Our Author hath divided his whole Work into three Books: In his first he hath divided Estates in Lands and Tenements, in this manner; For *Res per divisionem melius aperiuntur.*

Bracton.

A Figure of the diviſion of Poſſeſſions.



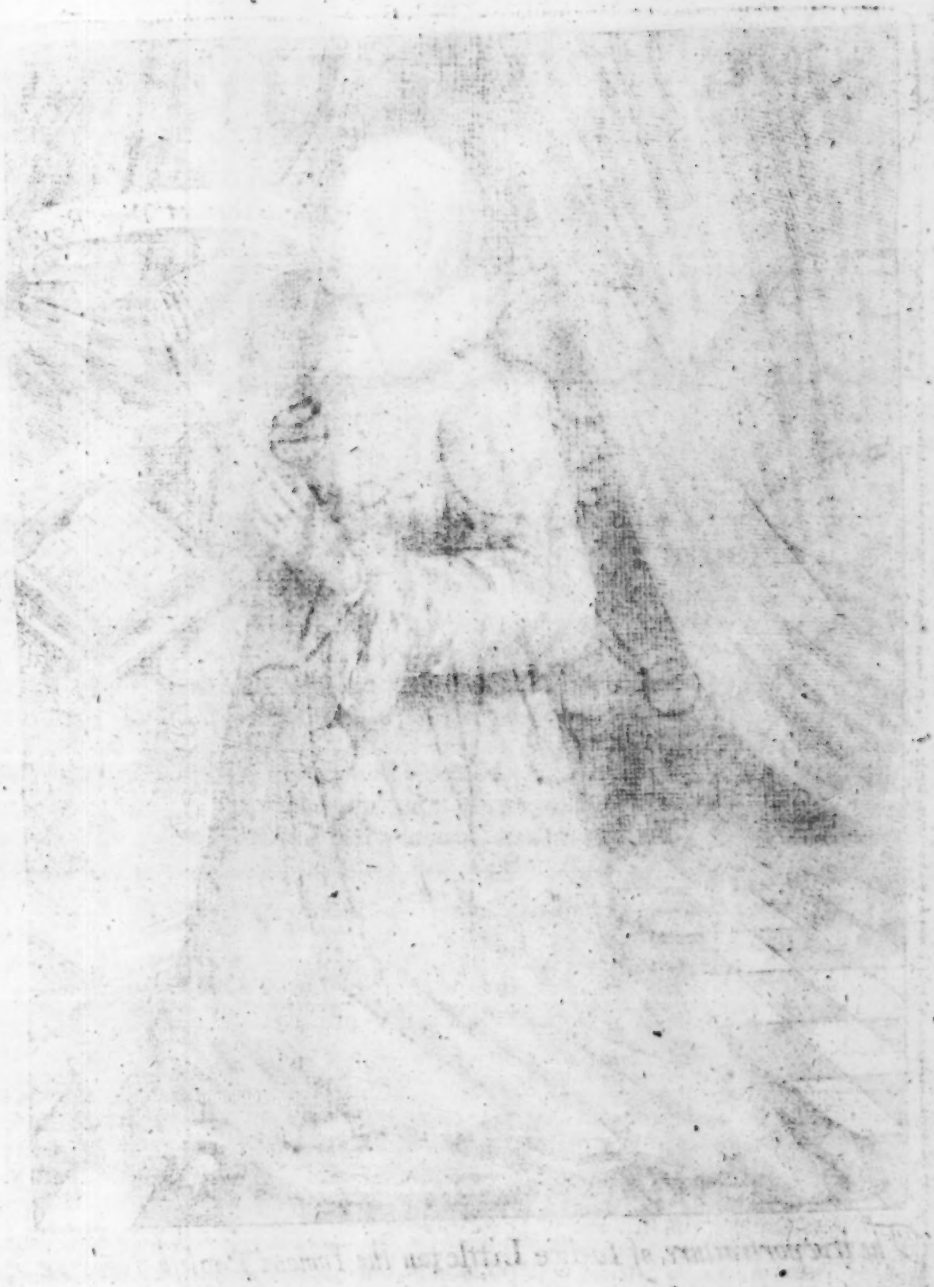
Our Author dealt onely with the Eſtates and terms aboveſaid; Somewhat We ſhall ſpeak of Eſtates by force of certain Statutes, as of Statute Merchant, Statute Staple, and *Elegit*, (whereof our Author intended to have written) and likewiſe to Executors to whom lands are deviſed for payment of debts, and the like.

Regula. Inſtabile eſt, parte una perſpecta, tota re non cognita, de ea judicare.

I ſhall deſire, that the learned Reader will not conceive any opinion againſt any part of this painful and large Volume, until he ſhall have adviſedly read over the whole, and diligently ſearched out, and well conſidered of the ſeveral Authorities, Proofs, and Reaſons which we have cited and ſet down for warrant and confirmation of our opinions throughout this whole Work.

Mine advice to the Student is, That before he read any part of our Commentaries upon any Section, that firſt he read again and again our Author himſelf in that Section, and do his beſt endeavours, firſt of himſelf, and then by conference with others, (which is the life of Study) to underſtand it, and then to read our Commentary thereupon, and no more at any one time then he is able with delight to bear away, and after to meditate thereon, which is the life of reading. But of this Argument we have for the better direction of our Student in his Study, ſpoken in our Epiſtle to our Firſt Book of *Reports*.

And albeit the Reader ſhall not at any one day (do what he can) reach to the meaning of our Author, or of our Commentaries, yet let him no way diſcourage himſelf, but proceed; for on ſome other day, in ſome other place, that doubt will be cleared. Our labours herein are drawn out to this great Volume, for that our Author is twice repeated, once in French, and again in Engliſh.



The true portraiture of Iudge **Littleton** *the Famous English Lanyer*

THE FIRST PART Of the INSTITUTES Of the LAWES of ENGLAND.

CHAP. I. *Fee simple.* *Sect.* I.

¶ TEnant in fee ſimple eſt celuy q̄ ad tres ou tenements a tener a luy & a ſes heires a touts iours. Et eſt appel en Latin, Feodum ſimplex, quia feodum idem eſt quod hæreditas, & ſimplex idem eſt quod legitimum vel purum, & ſic feodum ſimplex idem eſt quod hæreditas legitima vel hæreditas pura. Car ſi home voile purchaſer terres ou Tenements en Fee ſimple, il covient de aver ceux parolx en ſon purchaſe, A aver & tener a luy & a ſes hēs: Car ceux parolx (ſes heires) font leſtate denheritance. Car ſi home

TEnant in Fee ſimple is he which hath Lands or Tenements to hold to him and his heirs for ever. And it is called in Latine, *Feodum ſimplex*, for *Feodum* is the ſame that Inheritance is, and *Simplex* is as much to ſay, as lawful or pure. And ſo *feodum ſimplex* ſignifies a lawful or pure inheritance. For if a man would purchaſe lands or tenements in fee ſimple, it behoveth him to have theſe words in his purchaſe, To have and to hold to him and to his Heires: for theſe words (his Heires) make the Eſtate of the Inheritance. For if a man pur-

¶ *Tenant.*

In Latine Tenens is derived of the verb Teneo, and hath in the Law five ſignifications. 1. It ſignifies the eſtate of the Land, as when the Tenant in a Præcipe of land pleads, Quod non tenet, &c. this is as much as to ſay, That he hath not ſeiſin of the Freehold of the Land in queſtion. And in this ſenſe doth our Author take it in this place: & therefore he ſaith, tenant in fee ſimple is he which hath lands to hold to him & his heires. 2. It ſignifieth the Tenure or the ſervice whereby the lands and tenements have been holden; and in this ſenſe it is ſaid in the Writs of right, Quæ clamat tenere de te per liberum ſervitium, &c. And in this ſignification he is called a Tenant or holder, becauſe all the lands & tenements in England in the hands of ſubjects are holden mediately or immediately

Vide Sect. 85.

8 H. 7. 12. 17 E. 3. 35. 24 E. 3. 65. 66. 44 E. 3. 5. 48 E. 3. 9.

of the King. For in the law of England we have not properly, Allodium, That is any Subjects Land that is not holden, unleſs you will take Allodium for Ex ſolido, as it is often taken in the book of Domeſday: and tenants in Fee ſimple are there called Alodarii or Aloarii. And he is called a Tenant, becauſe he holdeth of ſome ſuperior Lord by ſome ſervice. And therefore the King in this ſenſe cannot be ſaid to be a Tenant, becauſe he hath no ſuperior but God Almighty; Prædium domini regis eſt directum dominium, cujus nullus Author eſt niſi Deus. And as Bracton ſaith, Omnis quidem ſub eo, & ipſe ſub nullo, niſi tantum ſub Deo. The poſſeſſions of the King are called Sacra patrimonia, and Dominica Coronæ Regis. But though a Subject hath not properly Directum, yet hath he Utile dominium. Of theſe Tenants our Author ſpeaketh in his ſecond Book. Alſo Tenere ſignifieth performance, as in the Writ of Covenant, Quod teneat conventionem, that is, That he hold or perform his Covenant. And likewiſe it ſignifieth to be bound as it is ſaid in Writs common Obligation, teneri & firmiter obligari. Laſtly, It ſignifieth to deem or judge, as in 38 E. 3. c. 4. It ſhall be holden for none (that is) judged or deemed for none, and ſo we commonly ſay, it is holden in our books. And theſe ſeveral ſignifications do properly belong to our Tenant in Fee ſimple. For he hath the eſtate of the Land, he holdeth the land of ſome ſuperiour Lord, and is to perform the ſervices due, and thereunto he is bounden by doom and judgment of Law. Of the ſeveral eſtates of Land our Author treateth in his firſt book and beginneth with Fee ſimple, becauſe all other eſtates and intereſts are derived out of the ſame.

Mir. des Juſtic. c. 1. ſect. 3. Cuſtomes de Normandy, cap. 28.

L'eſt. de 16 R. 2. cap. 5. 14. El. Dy. 313. 2. Lib. 1. 47. in Alton Woods Caſe.

Bract. lib. 1. cap. 8.

¶ *Fee ſimple*, Fee cometh of the French Fief, (i) prædium beneficiarium, and legally ſignifieth Inheritance, as our Author himſelf hereafter expounded it. And Simple is added for that it is deſcendible to his heirs generally, that is, ſimply, without reſtraint to the heirs of his body, or the like. Feodum eſt quod quis tenet ex quacunque cauſa, ſive ſit tenementum, ſive redditus, &c. In Domeſday it is called Feudum. (a) Of Fee ſimple, it is commonly holden, that there be three kinds, viz. Fee ſimple abſolute, Fee ſimple conditional, and Fee ſimple qualified, or a baſe fee. But the more genuine and apt diviſion, were to divide Fee, that is, Inheritance, into three parts, viz. Simple or abſolute, Conditional, and qualified or baſe. For this word (Simple) properly excludeth both conditions and limitations, that defeat or abridg the fee. * Hereby it appeareth, that Fee in our legal underſtanding ſignifieth, that the land belongs to us and our heirs, in reſpect whereof the owner is ſaid to be ſeiſed in fee, and in this ſenſe the King is ſaid to be ſeiſed in fee. (b) It is alſo taken, as it is holden of another by ſervice, and that belongeth only to the Subject; Item dicitur ſeodum alio modo ejus qui alium feoffat & qd' quis tenet ab alio, ut ſi ſit qui dicat, talis tenet de me tot feoda per ſervitium militare. And Fleta ſaith, Poterit unus tenere in feodo quoad ſervitia, ſicut dominus capitalis, & non in Dominico, alius in feodo & dominico, & non in ſervitio, ſicut libere tenens alicujus. (c) And therefore if a ſtranger claim a Seigniory, and diſtrein, and avow for the ſervice, the Tenant may plead, That the tenancy is extra feodum, &c. of him (that is) out of the Seignior, or not holden of him that claimeth it, but he cannot plead Hors de ſon fee, unleſs he take the tenancy, that is, the ſtate of the Land upon him. Of fee in the firſt ſenſe our Author treateth in this firſt Book; and as it is taken in the ſecond ſenſe, in his ſecond book: and of the third you ſhall read in our Author, Sect. 13. 643, 644, 645. and plentifully in our books quoted in the margent.

Brit. fo. 83. 207. 208. Fleta lib. 5. cap. 5. & lib. 3. cap. 8. Bract. lib. 4. 263. Domeſday. Mir. des Juſt. c. 2. Sect. 15. 17. Bract. l. 2. c. 5, 6, 7. Brit. cap. 34. fol. 89. Flet. lib. 3. cap. 2. 8. & 9. & lib. 5. cap. 5.

(a) Bract. f. 263. & 207. Pl. Com. in Walſ. caſ. 7. H. 4. 46. 8 H. 4. 15. 18 H. 8. 3. b. 27. Aſſ. 33. 18. Aſſ. 5. 18 E. 3. 46. 24 E. 3. 28 9 E. 4. 18 16 H. 4 4. 10 E. 3. Account 56. 22. R. 2. Diſ. 50. 12. E. 4 3. 15 E. 4. 8. Dy. 8. El 252, 253. 12 H. 8 8. 4 H. 7. 2. The caſe of a perſon which hath a qualified fee. See in the title of Deſc.

(*) Vide Sect. 4.

(b) Bract. l. 4. f. 263. Flet. l. 5. c. 5. Brit. fo. 205. 207.

(c) 2. Aſſ. p. 4. 12. Aſſ 38. 12 E. 3 tit. Hors de ſon fee. 28. 28. Aſſ. 41. 7 H. 4. 30. 2 H. 6. 1.

¶ *Terres ou Tenements.* Here is to be obſerved, That a man may have a Fee ſimple in three kinds of hereditaments, viz. Real, Perſonal, and Mixt: Real, as Lands and Tenements, whereof our Author here ſpeaketh: Perſonal, King Edward the firſt in the thirteenth year of his Reign, Conceſſit Edmundo fratri ſuo chariſſimo, quod ipſe & hæredes ſui habeant ad requiſitionem ſuam in Cancellaria noſtra & hæredum noſtrorum Juſticiarios

Rot. par. 13 E. 1.

purthase terres per ceux parolx. A aver & tener a luy a touts jours: ou p riels parols, A aver & tener a luy & a ſes aſſignes a touts jours: en ceux deux caſes il ny ad eſtate forſque pur terme de vie, pur ceo que il fault ceux pols (ſes heires) les queux parolx tantſolement font leſtate denheritance en touts feoffments & Grants,

chaſe Lands by theſe words, To have and to hold to him for ever; or by theſe words, To have and to hold to him and his aſſignes for ever: in theſe two caſes he hath but an eſtate for term of life, for that there lack theſe words (his Heires) which words onely make an Eſtate of Inheritance in all Feoffments and Grants.

ciarios ad placita foreſtarum quas idem Frater noſter habet ex dono domini Regis Henrici patris noſtri ſecundum aſſiſ. foreſtæ tenend. &c. In this caſe the grantee and his heirs had a perſonall inheritance in making of a requeſt to have Letters patents of Commiſſion to have Juſtices aſſigned to him to hear and determine of the pleas of the forreſts, which concerneth neither lands nor tenements. And ſo it is if an Annuity be granted to a man and his heirs, it is a fee ſimple perſonal, & ſic de ſimilibus. And laſtly, hereditaments mixt both of the realty and perſonalty. As the Abbot of Whitby in the County of York, having a forreſt of the gift of William of Percey founder of that Abby, and by the Charters of King John and of other his progenitors, King Henry the third did grant Abbati & conventui de Whitbye, quod ipſi & eorum ſucceſſores imperpetuum habeant viridarios ſuos proprios de libertate ſua de Whitbye eligend. de catero in pleno com. Eborum, prout moris eſt, ad reſponſiones & præſentationes faciend. de tranſgreſſionibus quas amodo fieri continget de venatione infra metas foreſtæ ſuæ de Whitbye, quam habent ex donatione Will. de Percy, & Alani de Percey filii ejus, & redditione & conceſſione domini Johan. quondam regis Angliæ patris noſtri, & confirmatione noſtra, coram Juſticiariis noſtris itinerantibus ad placita foreſtæ in partibus illis & non alibi, ſicut viridarii foreſtæ noſtræ hujuſmodi reſponſiones & præſentationes facere debent, & conſueverunt. Et ſi contingat aliquos forinſecos, qui non ſunt de libertate prædictorum Abbatis & conventus, tranſgreſſionem facere de venatione infra metas foreſtæ prædictæ, quos prædicti viridarii attachiare non poſſunt: Volumus & concedimus pro nobis & hæredibus noſtris, quod hujuſmodi tranſgreſſores per Juſticiarios foreſtæ noſtræ ultra Trentam attachientur ad præſentationem viridariorum prædict. ad reſpondendum inde coram Juſticiariis noſtris itinerantibus ad placita foreſtæ noſtræ in partibus illis, cum ibid. ad placitandum venerint, prout ſecundum aſſiſam & conſuetudinem foreſtæ noſtræ fuerit faciend. Which Charter was pleaded upon the Claim made by the Abbot of Whitbye before Willoughby, Hungerford and Hanbury, Juſtices in Eire in the forreſt of Pickering, which Eire began Anno 8 E. 3. And theſe before them were allowed. And when the King createth an Earle of ſuch a County or other place, to hold that dignity to him and his heirs, this dignity is perſonal, and alſo concerneth lands and tenements. But of this matter more ſhall be ſaid in the next Chapter, Sect. 14, & 15.

Ro. Par. an. 47 H. 3. Itin. Pickering 8 E. 3. Ro. 42.

¶ *Et eſt appel en Latine feodum ſimplex, quia feod. idem eſt quod hæreditas.* Here Littleton himſelf teacheth the ſignification of Feodum, according to that which hath been ſaid, which onely is to be applied to fee ſimple pure and abſolute. And this and all his other interpretations of words and Etymologies throughout all his three books (wherein the ſtudious Reader will obſerve many) are perſpicuous, and ever per notiora, & nunquam ignotum per ignotius, and are moſt neceſſary; for ignoratis terminis ignoratur & ars.

Bract. lib. 4. cap. 9. fo. 263. Brit. cap. 32. & 79. For interpretation of words and Etymologies, Vide Sect. 9. 18. 95. 116. 119. 135. 154. 164. 174. 184. 186. 194. 204. 234. 267. 268. 334. 337. 424. 520. 592. 645. 689. 733.

¶ *Simplex idem eſt quod legitimum vel purum.* Hereof he treateth onely in this place. And Littleton ſaith well, that Simplex idem eſt quod purum. Simplex enim dicitur, quia ſine plicis; & purum dicitur, quod eſt merum & ſolum ſine additione. Simplex donatio & pura eſt ubi nulla addita eſt conditio ſive modus; ſimplex enim datur quod nullo additamento datur.

Bract. lib. 2. cap. 39. fol. 93. 62. b. lib. 4. cap. 28. Fleta lib. 3. cap. 8. Bract. lib. 2. ca. 5, &c. Brit. cap. 34.

¶ *Hæreditas legitima vel hæreditas pura.* And therefore it is well ſaid, quod donationum alia ſimplex & pura, quæ nullo jure civili vel naturali cogente, nullo præcedente metu vel interveniente, ex mera gratuitaque libertate donantis procedit, & ubi nullo caſu velit donator ad ſe reverti quod dedit; alia ſub modo, conditione, vel ob cauſam, in quibus caſibus non propriè ſit donatio, cum donator id ad ſe reverti velit, ſed quædam potius feodalis dimiſſio: alia abſoluta & larga; alia ſtricta & coarctata, ſicut certis hæredibus quibuſdam à ſucceſſoribus excluſis, &c. And therefore ſeeing Fee ſimple is hæreditas legitima vel pura, it plainly confirmeth that the diviſion of fee is by his authority rather to be divided, as is aforeſaid, then fee ſimple. And he ſaith well in the diſjunctive, legitima vel pura, for every fee ſimple is not legitimum. For a diſſeiſor, abator, intruder, uſurper, &c. have a fee ſimple, but it is not a lawfull fee. So as every man that hath a fee ſimple hath it either by right or by wrong. If by right, then he hath it either by purchaſe or diſcent. If by wrong, then either by diſſeiſin, intruſion, abatement, uſurpation, &c. In this Chapter he treateth onely of a lawfull fee ſimple, and dividerh the ſame as is aforeſaid.

Fleta lib. 3. ca. 2.

¶ *Car ſi home purchaſe.* Perſons capable of purchaſe are of two ſorts; perſons natural, created of God, as I. S. I. N. &c. and perſons incorporate or politique, created by the policy of man, (and therefore they are called bodies politique:) and theſe be of two ſuits, viz. either ſole, or aggregate of many: again aggregate of many, either of all perſons capable, or of one perſon capable, and the reſt incapable or dead in law, as in the Chapter of Diſcontinuance, Sect. 57. ſhall be ſhewed. Some men have capacity to purchaſe, but not ability to hold. Some capacity to purchaſe, and ability to hold, or not to hold, at the election of them or others. Some capacity to take and to hold. Some neither capacity to take nor to hold. And ſome ſpecially diſabled to take ſome particular thing.

Vide Sect. 57. Who have ability to grant. Perſons capable of purchaſe.

If an alien Chriſtian or infidel purchaſe houſes, lands, tenements, or hereditaments, to him

11 Eliz. Dier 283. 11 H. 4. 20. & 26. 7 E. 4. 29.

and his heirs, albeit he can have no heirs, yet he is of capacity to take a fee ſimple, but not to hold: For upon an office found the King ſhall have it by his prerogative, of whomſoever the land is holden. And ſo it is if the Alien doth purchaſe land and dy, the Law doth caſt the freehold and inheritance upon the King. If an Alien purchaſe any eſtate of freehold in houſes, lands, tenements, or hereditaments, the King upon office found ſhall have them. If an Alien be made Denizen, and purchaſe lands, and dy without iſſue, the Lord of the fee ſhall have the eſcheat, and not the King. But as to a leaſe for years, there is a diverſity between a leaſe for years of a houſe for the habitation of a Merchant ſtranger being an Alien, whoſe King is in league with ours, and a leaſe for years of lands, meadows, paſtures, woods, and the like. For if he take a leaſe for years of lands, meadows, &c. upon office found the King ſhall have it: But of a houſe for habitation he may take a leaſe for years as incident to Commercery, for without habitation he cannot merchandize or trade. But if he depart, or relinquiſh the Realm, the King ſhall have the leaſe. So it is if he dy poſſeſſed thereof, neither his executors or adminiſtrators ſhall have it, but the King: for he had it onely for habitation as neceſſary to his trade or traffique, and not for the benefit of his executors or adminiſtrators. But if the Alien be no Merchant, then the King ſhall have the leaſe for years, albeit it were for his habitation: and ſo it is if he be an Alien enemy. And all this was ſo reſolved by the Judges aſſembled together for that purpoſe in the caſe of Sir James Crofts, Paſch. 29. of the reign of Queen Elizabeth. Alſo if a man commit felony, and after purchaſe lands, and after is attainted, he hath capacity to purchaſe, but not to hold it, for in that caſe the Lord of the fee ſhall have the eſcheat. And if a man be attainted of felony, yet he hath capacity to purchaſe to him and to his heirs, albeit he can have no heir, but he cannot hold it, for in that caſe the King ſhall have it by his prerogative, and not the Lord of the fee; for a man attainted hath no capacity to purchaſe (being a man civiliter mortuus) but onely for the benefit of the King, no more then the Alienee hath. If any ſole Corporation, or aggregate of many, either Eccleſiaſtical or temporal, (for the words of the ſtatute be, *Si quis religioſus vel alius*) purchaſe lands or tenements in fee, they have capacity to take, but not to retain, (unleſs they have a ſufficient licence in that behalf) for within the year after the alienation the next Lord of the fee may enter; and if he do not, then the next immediate Lord from time to time to have half a year; and for default of all, the meſne Lords, then the King, to have the land ſo alienned for ever: which is to be underſtood of ſuch inheritance as may be holden. But of ſuch inheritances as are not holden, as Villeins, rent charges, commons, and the like, the King ſhall have them preſently, by a favorable interpretation of the ſtatute. An Annuity granted to them is not mortmain, becauſe it chargeth the perſon onely. Some have ſaid that it is called mortmain Manus mortua, quia poſſeſſio eorum eſt immortalis, manus pro poſſeſſione, & mortua pro immortali; and the rather, for that by the Laws and ſtatutes of the Realm, all Eccleſiaſtical perſons are reſtrained to alien. Others ſay it is called manus mortua per Antiphraſin, becauſe bodies politique and corporate never die. Others ſay that it is called Mortmain by reſemblance to the holding of a mans hand that is ready to die, for that he then holdeth he letteth not go till he be dead. Theſe and ſuch others are framed out of wit and invention: but the true cauſe of the name, and the meaning thereof, was taken from the effects, as it is expreſſed in the ſtatute it ſelf; per quod quæ ſervitia ex hujuſmodi feodis debentur, & quæ ad defenſionem regni ab initio proviſa fuerunt, indebite ſubtrahuntur, & capitales domini eſchaetas ſuas amittunt; ſo as the lands were ſaid to come to dead hands as to the Lords, for that by alienation in mortmain they loſt wholly their eſcheats, and in effect their Knights ſervices for the defence of the Realm, Wards, Marriages, Reliefs, and the like; and therefore it was called a dead hand, for that a dead hand yieldeth no ſervice.

I paſs over Villeins or Bondmen, who have power to purchaſe lands, but not to retain them againſt their Lords, becauſe you ſhall read at large of them in their proper place in the Chapter of Villenage.

An Infant or minor (whom we call any that is under the age of 21. years) hath without conſent of any other capacity to purchaſe, for it is intended for his benefit, and at his full age he may either agree thereunto and perfect it, or, without any cauſe to be alledged, waive or diſagree to the purchaſe, and ſo may his heirs after him, if he agree not thereunto after his full age.

A man of non ſane memory may without the conſent of any other purchaſe lands, but he himſelf cannot waive it; but if he dy in his madneſs, or after his memory recovered, without agreement thereunto, his heir may waive and diſagree to the ſtate, without any cauſe ſhewed: and ſo of an Ideot. But if the man of non ſane memory recovers his memory, and agrees unto it, it is unavoidable.

If an Abbot purchaſe lands to him and his ſucceſſors without the conſent of his Covent, he himſelf cannot waive it, but his ſucceſſor may upon juſt cauſe ſhewed, as if a greater rent were reſerved thereupon then the value of the land or the like; but he cannot waive it unleſs it be upon juſt cauſe: & ſic de ſimilibus. Prælatus Eccleſiæ ſuæ conditionem meliorare poteſt, deteriorare nequit. And in another place he ſaith, Eſt enim Eccleſia ejuſdé conditionis, quæ ſungitur vice minoris.

But

32 H.6.23. Pl. Com. 483.

5 Mar. Brit. tit. Denizen 22.

Paſch. 29 Eliz. in Sir James Crofts caſe.
49 Aſſ. pl.2. 49 E.3.11.

Magna Charta cap.36.
7 E.1. de religioſis.
W.2. 13 E.1. ca.32.
15 R.2. ca.5. 23 H.8. ca.10.
39 Eliz. ca.5. 23 H.8. Aſſ.436.
29 Aſſ.p.17. Brit. f.32.
Flota lib.2. cap.4, & 5.
19 E.2. tit. Vil.34.
29 E.3. Ibid. 22. 21 E.3.5.
4 H.6.9. 19 H.6.63.65.
3 E.4.19. 19 E.3. Mortm.8.
34 H.6.37. 19 H.6.69.
7 E.4.14.
Pl. Com. 193. in Wrotteſley's caſe.

Le ſtatut. de religioſis 7 E.1.

43 Aſſ. p.27.

Bract. lib.2. fol.12. & 32.

But no ſimile holds good in every thing, according to that ancient ſaying. Nullum ſimile quatuor pedibus currit. (a) An Hermaphrodite may purchaſe according to that ſex which prevaileth. A Feme covert cannot take any thing of the gift of her husband, but is of capacity to purchaſe of others without the conſent of her husband. And of this opinion was Littleton in our books, and in this book, Sect. 677. but her husband may diſagree thereunto, and devеſt the whole eſtate, but if he neither agree nor diſagree, the purchaſe is good, but after his death, albeit her husband agreed thereunto, yet ſhe may without any cauſe to be alledged waive the ſame, and ſo may her heirs alſo, if after the deceaſe of her husband ſhe her ſelf agreed not thereunto.

a) 1 H.7. 16. 7 H.4. 17. 18 H.6.8.39 E.4.3.30. 15 E.4. fol.1.b. 27 H.8. 24.

(b) A wife (Uxor) is a good name of Purchaſe, without a Chriſtian name, and ſo it is, if a Chriſtian name be added and miſtaken, as Em for Emelyn, &c. for utile per inutile non vitiatur. But the Queen, the Conſort of the King of England, is an exempt perſon from the King by the Common Law, and is of ability and capacity to purchaſe and grant without the King. Of which ſee more at large, Sect. 206.

b) A name of purchaſe. 2 H.4. 25. 1 H.5. 8. 46 E. 3.22.12. Aſſ.16. 30 E.3.18. 1 Aſſ.11. 11 H.4.31.9 E.4.49. 13 E.3. Eſtoppel. 231. F. N. B. 9. 7. a.

(c) The Pariſhioners or Inhabitants, or probi homines of Dale, or the Churchwardens, are not capable to purchaſe lands, but goods they are, unleſs it were in ancient time, when ſuch grants were allowed.

c) 12 H.7.28.37 H. 6.30. 10 H.4.3.b.

(d) In ancient grant by the Lord to the Commoners in ſuch a waſte, that a way leading to their Common ſhould not be ſtreighned, was good, but otherwiſe it is of ſuch a grant at this day. (e) And ſo in ancient time a grant made to a Lord, & hominibus ſuis tam liberis quam nativis, or the like, was good, but they are not of capacity to purchaſe by ſuch a name at this day. But yet at this day if the King grant to a man to have the goods and cattels de hominibus ſuis or de tenentibus ſuis or de reſidentibus intra feodum, &c. it is good, for there they are not named as purchaſers or takers, but for another mans benefits, who hath capacity to purchaſe or take. (f) And regularly it is requiſite that the Purchaſer be named by the name of Baptiſm and his ſurname, and that ſpecial heed be taken to the name of Baptiſm, for that a man cannot have two names of Baptiſm as he may have divers ſirnames. (g) And it is not ſafe in writs, pleadings grants, &c. to tranſlate ſurnames into Latine. As if the ſurname of one be Fitzwilliam, or Williamſon, if he tranſlate him to filius Willi. if in truth his father had any other Chriſtian name than William, the writ, &c. ſhall abate, for Fitzwilliam or Williamſon is his ſirname whatſoever Chriſtian name his father had, therefore the Lawyer never tranſlates ſurnames. And yet in ſome caſes, though the name of Baptiſm be miſtaken, (as in the caſe before put of the wife) the grant is good.

d) 22 E. 3. barre 261.
e) 33 E.3. grant 83. 18 E.3. 50 12. Aſſ. 35. 14 H.6. 12.34. Aſſ. p.11. 40 Aſſ. p.21.

f) Bract. lib. 4. tract 1.ca 20. Britton fol. 121, 122. 3 E.3.78.25 E 3 43. 26 Aſſ.61.30 Aſſ.16. 46 E.3.20. 39 E.3.27. 3 H. 6.25.19 H.6.2. 30 H.6. 1.34 H. 6.19. 11 H.4.37.9 E.4.29. 5 E.4.46.65.14 H.7.11. 30 Eliz. Dier.259. 8 E. 3.436.29 E.3. 25. 1 H.4.3 H.6.26. 19 H.6.2. 34 H.6. 19. 5 E.4. 55. 27 H.8.11. 1 H.5.5. 18 E.3 32.27 E.3.85. 8 E. 3.427. 7 H.6.29. 9 H.5.9.

Do it is if lands be given to Robert Earl of Pembroke where his name is Henry, to George Biſhop of Norwich, where his name is John, and ſo of an Abbot, &c. for in theſe and the like caſes there can be but one of that Dignity or name. And therefore ſuch a grant is good albeit the name of Baptiſm be miſtaken. If by Licence lands be given to the Dean and Chapter of the holy, and individed Trinity of Norwich, this is good, although the Dean be not named by his proper name, if there were a Dean at the time of the grant, but in pleading he muſt ſhew his proper name. And ſo on the other ſide. If the Dean and Chapter make a Leaſe without naming the Dean by his proper name, the Leaſe is good, if there were a Dean at the time of the Leaſe, but in pleading the proper name of the Dean muſt be ſhewed, and ſo is the Book of 18 E.4. to be intended for the ſame Judges in 13 E. 4. held the grant good to a Major, Aldermen, and Commonalty albeit the Major was not named by his proper name, but in pleading it muſt be ſhewed, as it is there alſo holden. If a man be baptized by the name of Thomas, and after at his Confirmation by the Biſhop is named John, he may purchaſe by the name of his Confirmation. And this was the caſe of Sir Francis Gawdye, late chief Juſtice of the Court of Common Pleas, whoſe name of Baptiſm was Thomas, and his name of Confirmation Francis, and that name of Francis by the advice of all the Judges in Anno 35 H.8. he did bear and after uſed in all his purchaſes and grants. (h) And this doth agree with our ancient Books, where it is holden that a man may have divers names at divers times, but not divers Chriſtian names. And the Court ſaid, that it may be that a woman was baptized by the name of Anable, and forty years after ſhe was confirmed by the name of Douce, and then her name was changed, and after ſhe was to be named Douce, and that all purchaſes, &c. made by her by the name of Baptiſm before her Confirmation remain good, a matter not much in uſe nor requiſite to be put in ure, but yet neceſſary to be known. (i) But purchaſes are good in many caſes by a known name, or by a certain deſcription of the perſon without either ſirname or name of Baptiſme, as Uxori I.S. as hath been ſaid, or primogenito filio, or ſecundo genito filio, &c. or filio natu minimo I. S. or ſeniori puero, or omnibus filiis or filiabus I. S. or omnibus liberis ſeu exitibus of I. S. or to the heirs of I. S.

g) 40 E.3. 22. Fitzwilliam. 24 E.3.64. Fitz John. 39 E.3.24. Fitz Robert. 27 E.3.85. tit. grant 67. 18 E. 3.23,24.18 E.4.8. b. 14 H.7.31,32. 13 E.4.8.5 E.3. Vouch. 179. 27 E. 3.85. where the proper name is miſtaken.

h) 22 R.2. brc.936. 32 R.2. feoffments 58. 9 E.3.14.46 E.3.22. 3 H.6.26.34 H. 6.29. 1 H.7.29 5 E.2. brc.741. 14 H.7.11.

i) 17 E.3.29.18 E.3.59. 33 E.3.18.11 H.4.84. Pl. Com.525. 21 R.2. deviſe 41 E.3.19.15 E.3. Counter. plea de Vouch.43. 35 Aſſ.13.37 H.6.30. 11 E.4.2.7 H.4.5. 40 E.3.9. 37 H.8. Noſme 40. Br.

(k) But if a man do infranchiſe a Villein, cum tota ſequela ſua, that is not ſufficient to infranchiſe his children born before, for the incertainty of the word ſequela. (l) But regularly in Writs, the Demandant or Tenant is to be named by his Chriſtian name and Surname, unleſs it be in caſes of ſome Corporations of Bodies politique.

k) 15 H.7.14.

l) 8 E.3.437.29 E.3. 44. 19 E.4.1.21 E.4.19. 7 H. 6.29.

(a) 39 E.3.11.24. 17 E.3.42. 35 Aſſ.13. 41 E.3.19.

(a) A baſtard having gotten a name by reputation may purchaſe by his reputed or known name to him and his heirs, although he can have no heir but of his body. A man makes a leaſe to B. for life, remainder to the eldeſt iſſue male of B. & the heirs males of his body. B. hath iſſue a baſtard ſon, he ſhall not take the remainder, becauſe in Law he is not his iſſue, for qui ex damnato coitu naſcuntur inter liberos non computentur. And as Littleton ſaith, A baſtard is quaſi nullius filius and can have no name of reputation as ſon as he is born. (b) So it is if a man make a leaſe for life to B. the remainder to the eldeſt iſſue male of B. to be begotten of the body of Jane S. whether the ſame iſſue be legitimate or illegitimate B. hath iſſue a baſtard on the body of Jane S. this ſon or iſſue ſhall not take the remainder, for (as it hath been ſaid) by the name of iſſue, if there had been no other words he could not take and (as it hath been alſo ſaid) a baſtard cannot take, but after he hath gained a name by reputation, that he is the ſon of B, &c. (c) And therefore he can take no remainder limited before he be born, but after he be born and that he hath gained by time a reputation to be known by the ſame of a ſon then a remainder limited to him by the name of the ſon of his reputed father is good. But if he cannot take the remainder by the name of iſſue at the time when he is born he ſhall never take it. And ſo it ſeemeth, and for the ſame cauſe, if after the birth of the iſſue, B. had married Jane S. ſo as he became Baſtard eigne, and had a poſſibility to inherit, yet he ſhall not take the remainder.

Vid. Sect.188.

(b) So it was reſolved. M.38. & 39. Eliz. in Bre. de errore, for land in Portington in Com. Salop.

(c) 39 E.3.11.24. 35 Aſſ.13. 41 F.3. 19.17 E.3.42.

Perſons deformed having humane ſhape, Ideots, mad men, lepers, deaf, dumb, and blind, minors, and all other reaſonable creatures have power to purchaſe and retain lands or tenements. (d) But the Common Law doth diſable ſome men to take any eſtate in ſome particular things: As if an office either of the grant of the King or Subject which concerns the adminiſtration, proceeding, or execution of Juſtice, or the Kings revenue, or the Commonwealth, or the intereſt, benefit, or ſafety of the ſubject or the like; if theſe, or any of them be granted to a man that is unexpert, and hath no skill and ſcience to exerciſe or execute the ſame, the grant is meerly void, and the party diſabled by Law, and incapie to take the ſame, pro commodo regis & populi, for only men of skill, knowledge, and ability to exerciſe the ſame are capable of the ſame to ſerve the King and his people. (e) An infant or minor is not capable of an office of Stewardſhip of the Court of a Mannor either in poſſeſſion or reverſion. (f) No man though never ſo skilful and expert, is capable of a judicial office in reverſion, but muſt expect until it fall in poſſeſſion. And ſee Sect.378. where bargaining or giving of money, or any manner of reward, &c. for offices there mentioned, ſhall make ſuch a purchaſer incapable thereof, which is worthy to be known, but more worthy to be put in due execution.

(d) 5 E.4.tit. offic. & officer. B.48. Vintors caſe. 5 Mar. Dier. fol.150. Scroggscaſe.

(e) M.40. & 41 Eliz. in the Kings Bench between Scamler and Walters.

(f) Lib. 11. fo.2. in Auditor Curles caſe. Vid. Sect.378. 1 H. 7.31.

Some are capable of certain things for ſome ſpecial purpoſe, but not to uſe or exerciſe ſuch things themſelves. As the King is capable of an office, not to uſe, but to grant, &c.

A monſter born within lawful matrimony, that hath not humane ſhape cannot purchaſe much leſs retain any thing. (g) The ſame Law is de profeſſis & mortuis ſeculo, for they are civiliter mortui, whereof you ſhall read at large in his proper place. Sect. 200.

(g) Bract. lib. 5.fo. 421. 415 Brit. ca.22.39. Fleta lib.6. cap.41. 1 E. 3.9. 4 E. 3.4. 3 H.6.24.21. R. 2. judgment 263. 7 H.4.2. 14 H.8.16. Doct. & Stud. 141. Pl. Com. fo.47. Britt. c.33.

¶ *Purchaſe.* In Latine Perquiſitum of the Verb Perquirere, Littleton deſcribeth it in the end of this Chapter in this manner, Item, purchaſe eſt appel le poſſeſſion de trés ou tenemẽts que home ad per ſon fait, ou per ſon agreement, a quel poſſeſſion il ne avient per title de diſcent de nul de ſes anceſters, où de ſes coſens mes per ſon fait demẽ. So as I take it, a purchaſe is to be taken, when one cometh to lands by conveyance or title, and that diſſeiſins, abatements, intruſions, uſurpations, and ſuch like eſtates gained by wrong, are not ſaid in Law purchaſes, but oppreſſions and injuries

Note, that purchaſers of lands, tenements, leaſes, and hereditaments for good and valuable conſideration, ſhall avoid all former fraudulent and covinous conveyances, eſtates, grants, charges and limitations of uſes, of or out of the ſame, (h) by a Statute made ſince Littleton wrote, whereof you may plainly and plentifully read in my Reports, to which I will add this caſe, I.C. had a Leaſe of certain lands for 60 years, if he lived ſo long, and forged a Leaſe for 90 years abſolutely, and he by Indenture reciting the forged Leaſe for valuable conſideration bargained and ſold the forged Leaſe, and all his intereſt in the Land to R.G. It ſeemed to me that R. G. was no purchaſer within the Statute of 27 Eliz. for he contracted not for the true and unlawful intereſt, for that was not known to him, for then perhaps he would not have dealt for it, and the viſible and known term was forged; and although by general words the true intereſt paſſed, notwithſtanding he gave no valuable conſideration, nor contracted for it. And of this opinion were all the Judges in Serjeants Inne in Fleetſtreet.

(h) 27 Eliz. ca.4. 13 Eliz. ca. 5. Lib. 3. fo.80.82. 83. Twines caſe Lib.5. fo.60. Gooches caſe, lib. 6. fo. 72. Burrels caſe, lib. 11. fo.74. Paſch.12. Ja. inter Jones pl. and Sir Rich. Groobham def. in ejectione firme in evidence all Jury.

(i) In ancient time when a man made a fraudulent feoffment it was ſaid, quod poſuit terram illam in brigam, where brigam doth ſignify wrangle, contention, or intricacy, for fraud is the mother of them all. (k) And on the other ſide, purchaſes, eſtates, and contracts may be avoided ſince Littleton wrote by certain Acts of Parl. againſt Uſury above ten in the hundred, in ſuch manner and form as by thoſe Acts it is provided. Which Statutes are well expounded in my books of Reports which may be read there. To them that lend money my caveat, is that neither

(i) Hill. 18.E. 3. coram Rege in Theſaur.

(k) 37 H.8. cap.6. 13 Eliz. ca.8. lib.5. 10. 69. Burtons caſe, eodem lib.10.7. Claitons caſe.

neither directly nor indirectly, by art, or cunning invention, they take above ten in the hundred; for they that ſeek by ſleight to creep out of theſe Statutes, will deceive themſelves, and repent in the end.

¶ *Purchaſe terres.* Littleton here and in many other places putteth Lands but for an example, for his rule extendeth to Seignories, Rents, Advowſons, Commons, Eſtovers, and other hereditaments of what kind and nature ſoever. Lands and other things to be purchaſed.

¶ *Terre.* Terra, Land in the legal ſignification comprehendeth any ground, ſoil or earth whatſoever, as Meadows, Paſtures, Woods, Moors, Waters, Mariſhes, Furſes and Heath, Terra eſt nomen generaliſſimum, & comprehendit omnes ſpecies terræ, but properly Terra dicitur à terendo, quia vomere teritur, and anciently it was written with a ſingle r, and in that ſenſe it includeth whatſoever may be plowed, and is all one with arvum ab arando. It legally includeth alſo all Caſtles, Houſes and other buildings: for Caſtles, Houſes, &c. conſiſt upon two things, viz. land or ground, as the foundation and ſtructure thereupon, ſo as paſſing the land or ground, the ſtructure or building thereupon paſſeth therewith. * Land is anciently called Fleth, but land builded is more worthy than other land, becauſe it is for the habitation of man, and in that reſpect hath the precedency to be demanded in the firſt place in a Præcipe, as hereafter ſhall be ſaid. And therefore this element of the Earth is preferred before the other elements, firſt and principally, becauſe it is for the habitation and reſting place of man, for man cannot reſt in any of the other elements, neither in the Water, Ayr or Fire. For as the Heavens are the habitation of Almighty God, ſo the Earth hath he appointed as the Suburbs of Heaven, to be the habitation of man; Cœlum cœli Domino, terram autem dedit filiis hominum. All the whole Heavens are the Lords, the Earth hath he given to the children of men. Beſides every thing as it ſerveth more immediately or more nearly for the food and uſe of man (as ſhall be ſaid hereafter,) hath the precedent dignity before any other. And this doth the earth, for out of the earth cometh mans food, and bread that ſtrengthens mans heart, Confirmat cor hominis, and Wine that gladdeth the heart of man, and Oyl that makes him a chearful countenance. And therefore Terra olim Ops mater dicta eſt, quia omnia hæc opus habeant ad vivendum. And the Divine agreeth herewith, for he ſaith, Patriam tibi & nutricem, & matrem, & menſam, & domum poſuit terram Deus, ſed & ſepulchrum tibi hanc eandem dedit. Alſo the Waters that yield fiſh for the food and ſuſtenance of man, are not by that name demandable in a Præcipe but the land whereupon the water floweth or ſtandeth is demandable, (as for example,) vigenti acr' terræ aqua cooperet; and beſides, the earth doth furniſh man with many other neceſſaries for his uſe, as it is replenished with hidden treaſures: namely, with Gold, Silver, Braſſe, Iron, Tinne, Lead, and other mettals, and alſo with great variety of precious ſtones, and many other things for profit, or nament and pleaſure. And laſtly, the earth hath in Law a great extent upwards; not only of Water, as hath been ſaid, but of Ayr, and all other things, even up to Heaven, for cujus eſt ſolum, ejus eſt uſque ad cœlum, as it is holden, 14 H. 8. fo. 12. 22 H. 6. 59. 10 E. 4. 14. Regiſt. origin. and in other Books.

* Tr. 7 E. 3. coram Rege Northampt. in Theſaur.

Pl. Com. 168. b. & 170. a & 151. Lib. 4. 87. b. Lutterels caſe. 4 E. 3. 161. & 6 E. 3. 283. 8 E. 3. 377. Temp. E. 1. Bre. 811. 28 H. 8. Dyer. 47.

Pſal. 115. 16.

Pſal. 104. 15.

Chryſoſt. Hom. 30.

And albeit land whereof our Author here ſpeaketh, be the moſt firm and fixed inheritance; and therefore it is called ſolum, quia eſt ſolidum, and Fee ſimple, the moſt higheſt and abſolute eſtate that a man can have, yet may the ſame at ſeveral times be movable, ſometime in one perſon, and alternis vicibus in another, nay ſometime in one place, and ſometime in another. As for example, if there be 80 acres of meadow which have been uſed time out of mind of man, to be devided between certain perſons, and that a certain number of acres appertain to every of theſe perſons; as for example, to A. 13. acres to be yearly aſſigned and allotted out, ſo as ſometime the 13. acres lye in one place, and ſometime in another, and ſo of the reſt. A hath a moveable Fee ſimple in 13 acres, and may be parcel of his Manor, albeit they have no certain place, but yearly ſet out in ſeveral places, ſo as the number only is certain, and the particular acres or place wherein they lye after the year incertain. And ſo it was adjudged in the Kings Bench upon an eſpecial verdict.

Vid. ſect. 59. wherein this caſe livery ſhall be made.

Vid. ſect. 648. How theſe 13 acres may be charged. Hill. 34. Eliz. Rot. 489. in tres inter Weldon & Bridgwater in Banco Regis Temps. E. 1. tit. partition. 21. F. N. B. 62. I. Videli. 1. fo. 87. per. Walmeſ. F. N. B. 62. K.

If a partition be made between two Coparceners of one and the ſelf-ſame land, that the one ſhall have the land from Eaſter until Lammas to her and to her heirs, and the other ſhall have it from Lammas to Eaſter to her and her heirs; or the one ſhall have it the firſt year, and the other the ſecond year, alternis vicibus, &c. there it is one ſelf ſame land, wherein two perſons have ſeveral inheritances at ſeveral times. So it is if two Coparceners have two ſeveral Manors by deſcent, and they make partition, that the one ſhall have the one Manor for a year, and the other the other Manor for the ſame year, and after that year, then ſhe that had the one Manor ſhall have the other, & ſic alternis vicibus for ever, and albeit the Manors be ſeveral, yet are they certain, and therefore ſtronger than Bridgewaters caſe, ſo as this doth make a diviſion of ſtates of inheritances of lands, viz. Certain or unmoveable whereof Littleton here ſpeaketh, and incertain and moveable, whereof theſe three caſes for examples have been put. Wherein it is to be noted, that the poſſeſſion is not only ſeveral, but the inheritance alſo.

Vide ſect. 184. where avowſons, &c. may be appendant and in gros.

It

By what names, &c. lands, &c. ſhall paſs.
(a) Vide Sect. 279.
14 H. 8. 6. 4 H. 7. 3. 10 H. 7. 24.
11 H. 7. 21. 14. H. 7. 4. 6.
21 H. 7. 36, 37.
9 H. 6. 52. 37 H. 6. 35.
22 E. 4. barre 116.
11 H. 4. 90. 18 E. 3. Execution 56. 4 E. 3. 48. 8 E. 3. 13.
9 Aſſ. p. 12. 38 E. 3. 24.
(b) Bracton fol. 222.
17 E. 3. 75. 39. H. 6. 38.
11 Eliz. Dier 285.
(c) Paſch. 12. Ia. Inter Dockwray & Points in evidence al Jury in Banke le Roy.
(d) Vide Sect. 279.
Bracton fo. 208.
40 E. 3. 45. Pl. Com. 154.
10 H. 7. 24. 28. 7 H. 7. 13.
18 H. 6. 29. 34 H. 6. 43.
20 H. 6. 4. 18 E. 4. 4.
4 E. 3. 48. 1 E. 3. 4. 32 E. 3. Scir. fac. 100.
22 E. 4. barre 116.
12 H. 3. Aſſ. 427. 34. Aſſ. 11.
13 E. 3. tit. Entry 57.
20 E. 3. 3. Bre. 685. W. 2. ca. 24.
(e) Tr. 11 R. 2. in trns ment. imprimee ne abridg. 11 A. 74.
(f) 7 E. 3. 342. 5. Aſſ. 9, 10, 7. Aſſ. 9.
(g) 45 E. 3. tit. feoffments & faits 90. 14 H. 8. 6.
Pl. Com. 541. b. F. N. B. fo. 8.
12 E. 3. Dower 90.
(h) 9 Aſſ. p. 12. 9 E. 3. 443. 466. Domeſday.
7 R. 1. int. fines in Theſaur.
(i) Int. Inquiſit apud Launcaſt. Anno 6 E. 1. in Theſaur. Mich. 1 H. 5. coram Rege Rot. 3. in Theſaur.
(k) Tr. 7. Eliz. in Banco regis lib. 5. fo. 11. Ives caſe.
14 H. 8. 1. 46 E. 3. 22.
28 H. 8. Dier 19.
32 H. 8. Br. reſervat. 39.
7 E. 6. Dier 79.
* Glanvil. lib. 8. cap. 3.
(l) Domeſday Regiſt. F. N. B 7
(m) 8 E. 2. Waſt. 111.
7 Aſſ. 18. 17 Aſſ. p. 13.
41 E. 3. Walt. 82.
* Hill. 14 E. 3. coram Rege Lanc. in Theſaur.
* Inter inquiſit. apud Lanc. in com. Cornubie coram Juſti. And. anno 6 E. 1. in Theſaur.
The B. of Exceſters caſe.
(n) Domeſday.
(o) Camden. 466. 151.
(p) Paſch. 44 E. 3. coram Rege in Theſaur.
(q) Hill. 13 E. 2. Lanc. coram Rege in Theſaur.
Camden Britt. 247.
Rot. Parl. 18 E. 1. 8.
Eveſque de Carliles caſe.
(r) Pl. Com. 169. 2
4 E. 2. Bre. 792, 793.
3 E. 3. 86. 4 E. 4. 1.
27 H. 8. 12.
(t) 20 Aſſ. pl. 9.
(t) Pl. Com. 169. 2. 33. E. 3. Bre. 241. 33 E. 3. Entry 80.
(u) Domeſday. F. N. B. 2. Reg.

It is alſo neceſſary to be ſeen by what names lands ſhall paſs. (a) If a man hath twenty acres of land & by Deed granteth to another and his heirs, veſturam terræ, and maketh Livery of ſeiſin ſecundum formam cartæ, the land it ſelf ſhall not paſs, becauſe he hath a particular right in the land for thereby he ſhall not have the houſes, timber, trees, mines, and other reall things parcel of the Inheritance, but he ſhall have the veſture of the land; (that is) the Corn, Graſſe, Underwood, Swepage, and the like, and he ſhall have an Action of treſpaſſe, quare clauſum fregit. (b) The ſame Law, if a man grant herbagium terræ, he hath a like particular right in the Land, and ſhall have an Action quare clauſum fregit, but by grant thereof and livery made, the ſoil ſhall not paſs, as is aforeſaid. (c) If a man let to B. the herbage of his woods, and after grant all his lands in the tenure, poſſeſſion, or occupation of B. the woods ſhall paſs, for B. hath a particular poſſeſſion and occupation, which is ſufficient in this caſe, and ſo it was reſolved. (d) So if a man be ſeiſed of a River, and by Deed do grant ſeparalem piſcariam in the ſame, and maketh livery of ſeiſin ſecundum formam cartæ, the ſoil doth not paſs nor the water, for the Grantor may take water there; and if the river become dry, he may take the benefit of the ſoil, for there paſſed to the Grantee but a particular right, and the livery being made ſecundum formam cartæ, cannot enlarge the grant. (e) For the ſame reaſon, if a man grant aquam ſuam, the ſoil ſhall not paſs, but the Piſcary within the water paſſeth therewith. And land covered with water, ſhall be demanded by the name of ſo many Acres, aqua coopert, whereby it appeareth that they are diſtinct things. (f) So if a man grant to another, to dig turves in his land, and to carry them at his will and pleaſure, the land ſhall not paſs, becauſe but part of the profit is given, for trees, mines, &c. ſhall not paſs. (g) But if a man ſeiſed of lands in fee, by his Deed granteth to another the profits of thoſe lands, to have and to hold to him and his heirs, and maketh livery ſecundum formam cartæ, the whole land it ſelf doth paſs: for what is the land but the profits thereof, for thereby veſture, herbage, trees, mines, and all whatſoever parcel of that land doth paſs.

(h) By the grant of the Boillourey of ſalt, it is ſaid, that the ſoil ſhall paſs, for it is the whole profit of the ſoil. And this is called Saliva of the French word Saltre, for a Salt pit, and you may read de Saliva in Domeſday; and Selda, ſignifieth the ſame thing: (i) and where you ſhall read in Records, de lacerta in profunditate aque falſe, there lacerta ſignifieth a fathome. If a man ſeiſed of divers acres of wood, grants to another omnes boſcos ſuos, all his woods, not only the woods growing upon the land paſs, but the land it ſelf, and by the ſame name ſhall be recovered in a Præcipe, for Boſcos doth not only include the trees, but the land alſo whereupon they grow.

(k) The ſame Law if a man in that caſe grant omnes Boſces ſuos creſentes, &c. yet the land it ſelf ſhall paſs, as hath been adjudged. * Fraſſetum ſignifieth a wood, or ground that is woody. (l) If a man hath a wood of Elder trees containing 20 acres, and granteth to another 20 acras Alneti (with an N, not a V,) the wood of Elders, and the ſoil thereof ſhall paſs, but no other kind of woods ſhall paſs by that name. Alnetum eſt ubi alni arbores creſcunt. * And Sullings are taken for Elders. (m) Salicetum doth ſignifie a wood of willowes, ubi ſalices creſcunt, theſe trees in our Books are called Sawces. * Selda is a wood of Sallowes, Willowes, or Withies. A hazeby ground is called Filicetum, ubi filices creſcunt. A wood of Aſhes is called Fraxinetum ubi fraxini creſcunt, and paſſeth by that name, and Lupulicetum where hops grew, and Arundinetum, where reeds grow. Some ſay that Dene or Denne, whereof Dena commeth, is properly a valley or dale. Dena ſylvæ, and the like. (n) As Droſden, or Druſden, or Druden, ſignifieth a thicket of wood in a valley, for Druf or Dru, ſignifieth a thicket of wood, and is often mentioned in Domeſday. And ſometime Dena or Denna ſignifieth, as Villa and Denne, a town.

(o) Cope ſignifieth a hill, and ſo doth Lawe, as Stantlawe is Saxeus collis. (p) Howe alſo ſignifieth a hill. And Hope combe, and Stew are valleys and ſo doth Clough. And Dunum or Duna, ſignifieth a hill or higher ground, and therefore commonly the towns that end in Dun have hills or higher grounds in them, which we call Downs. It commeth of the old French word Dun.

(q) In our Latine a wood is called Boſcus. Glava ſignifieth a little wood, in old Deeds, and Huſt or Hurſt a wood, and ſo doth Holt and Shawe. Twaire ſignifieth a wood grubbed up, and turned to arable. Sreethe or Stede betokeneth properly a bank of a River, and many times a place, as Stowe doth, and Wie a place upon the Sea ſhore, or upon a River. Lea or Ley ſignifieth paſture.

(r) If a man doth grant all his paſtures, Paſturas, the land it ſelf imployed to the feeding of beaſts doth paſſe, and alſo ſuch paſtures or feedings, as he hath in another mans ſoil. Leſwes or Leſues is a Daron word, and ſignifieth paſtures. (ſ) Between Paſtura and Paſcuum, the legal difference is that Paſtura in one ſignification containeth the ground it ſelf called paſture, and by that name is to be demanded. Paſcuum feeding, is whereſoever cattel are fed, of what nature ſoever the ground is, and cannot be demanded in a Præcipe by that name.

(t) If a man grant omnia prata ſua, all his meadowes, the land it ſelf of that kind paſſe, & dicitur pratum quaſi paratum, becauſe it groweth ſponte without manurance. (u) A man grants omnes brueras ſuas, the ſoil where heath doth grow paſſeth, and may be demanded by that name

in

in a præcipe. It is derived from bruyer, a French word for heath, and it is called Ros in the Britiſh tongue.

Roncaria or Runcaria ſignifieth land full of brambles and briers, and is derived of Roncier the French word, which ſignifieth the ſame, and as much as ſenticetum. (a) By the grant of omnes Juncarias, or joncarias, the ſoil where ruſhes do grow doth paſs; for Jonc in French is a Ruſh, whereof Joncaria cometh. (b) A man grants omnes Ruſcarias ſuas, the ſoil where ruſci, i. tina-holm, or Butchers-pricks, or broom, do grow, ſhall paſs. and ſo in the verſe in the Regiſter it is called; but in F. N. B. fol. 2. in the verſe, Piſcharia is put in ſtead of Ruſcaria. And Jampna cometh of Jonc and nower, a watriſh place, and is all one in effect with Joncaria. He that granteth omnes mariſcos ſuos, all his fens or moriſh grounds do paſs. Mariſcus is derived of the French word mares or marets; the Latin word for it is palus, or locus paludoſus. Mora is derived of the Engliſh word Moor, and ſignifieth a more barren and unprofitable ground then Marſhes, dangerous for any Cattel to go there, in reſpect of mirie and moorith ſoil, neither ſerves it for getting of turfs there. (c) You ſhall read in Record, that ſuch a man perquiſivit treſcent. acr. maretti, &c. This word marettum is derived of mare the Sea and rego, and properly ſignifieth a moriſh and gravelly ground, which the ſea doth cover and overflow at a full ſea, and lieth between the high-water-mark and the low-water-mark, infra fluxum & refluxum maris. By grant of theſe particular kinds, the lands of theſe particular kinds entirely do paſs; but, as hath been ſaid, by the grant of land in generall, all theſe particular kinds, and ſome others, do paſs. Non mihi ſi centum linguæ ſint oraque centum, Omnia terrarum percurrere nomina poſſem. And therefore let us turn our eye to generall words, which do include lands of ſeveral ſorts and qualities. (d) By the name of an Honor, which a ſubject may have, divers mannors and lands may paſs. So by the name of an Iſle, inſula, many mannors, lands and tenements may paſs.

Holme or Holmus ſignifieth an Iſle or fenny ground. * A Commote is a great Seigniory and may include one or divers mannors. (e) By the name of a Caſtle, one or more mannors may be conveyed; & è converſo, by the name of a mannor, &c. a Caſtle may paſs. In Domeſday I read, Comes Alanus habet in ſuo caſtellatu 200 maneria, &c. præter caſtellariam habet 43 maneria: and in that book a Caſtle is called caſtellum, and caſtrum, and domus defenſibilis, and manſus muralis. (f) But note by the way, that no ſubject can build a Caſtle, or houſe of ſtrength imbattelled, &c. or other fortreſſe defenſible, called in Law by the names aforeſaid, and ſometimes domus kernellatæ, or carnellatæ, imbattellatæ, tenellatæ, machecollatæ, meſe carnelier, &c. without the licence of the King, for the danger which might enſue, if every man at his pleaſure might do it. And they be called imbattelments, becauſe they are defences againſt barrets in aſſaults. Tenellare, or tanellare, is to make holes or loops in walls to ſhoot out againſt the Aſſailants. Machecollare or machecoulare, is to make a warlike device over a gate or other paſſage, like to a grate, through which ſcalding water, or ponderous or offenſive things, may be caſt upon the aſſailants. But to return to the matter from whence upon this occaſion we are fallen.

By the name of a town, Villa, a mannor may paſſe. In Domeſday, Alodium (in a large ſenſe) ſignifieth a free mannor, and Alodiarii or Alodarii, Lords of the ſame, and Lannemanni there ſignifie Lords of a Mannor, having ſocam & ſacam de tenentibus & hominibus ſuis. (g) And by the name of a mannor divers towns may paſs. Quod olim dicebatur fundus, nunc manerium dicitur. By the name of a fermi or fearme, firma, houſes, lands and tenements may paſſe: and firma is derived of the Saxon word feormian, to find or relieve, for in ancient time they reſerved upon their Leaſes cattel and other victual and proviſion for their ſuſtenance. (h) Note, a fearm in the North parts is called a Tacke, in Lancaſhire a Fermhold, in Eſſex a Wike. But the word fearm is the general word, and anciently fundus ſignified a fearm, and ſometime land. (i) Lands making a Knights fee ſhall paſs by the grant of a Knights fee, de uno feodo militis.

(k) Unum ſolinum, or ſolinus terræ, in Domeſday-book containeth two plow-lands, and ſometime leſſe then an half; for there it is ſaid, Septem Solini, or Solina, terræ ſunt 17 carucat'. Una hida, ſeu carucata terræ, is all one as a plow-land, viz. ſo much as a plough can till: ſullerye alſo ſignifieth a plow-land. Una virgata terræ, a yard-land, the Saxons called it Girdland, and now the G. is turned to a Y. is in ſome Countries 10. in ſome 20. in ſome 24. in ſome 30, &c. (l) Una bovata terræ, an oxgang, or an oxgate of land, is as much as an oxe can till. (m) But carucata terræ, and bovata terræ, are words compound, and may contain meadow, paſture, and wood, neceſſary for ſuch tillage. Jugum terræ in Domeſday containeth half a plow-land. And by all theſe names in the reign of K. 1. lands were uſually demanded, and long after.

(n) By the name of a Grange, Grangia, a houſe or edifice, not onely where corn is ſtored up, like as in barns, but neceſſary places for husbandry alſo, as ſtables for hay and horſes, and ſtables and ſtyes for other cattel, and a curtilage, and the Cloſe wherein it ſtandeth, ſhall paſſe; and it is a French word, and ſignifieth the ſame, as we take it.

(o) Stagnum, in Engliſh a pool, doth conſiſt of water and land; and therefore by the name of Stagnum,

(a) Regiſt. 1 E. 3. 9. F. N. B. 6.

(b) 16 Aſſ. p. 9. Regiſter.

Jampna.

(c) Paſch. 41 E. 3. coram Rege, Lincoln. rot. 28.

(d) Mag. Carte. c. 31. Wellingford, Nott. Bolon. Linc. &c. Trin. 33 E. 1. coram Rege in Thes. honor de Hannington, Mich. 9 E. 2. coram Rege in Theſ. 18 E. 2. Aſſ. 377. 26 Aſſ. p. 60. 6 E. 3. 56. 47 Ed. 3. 21. honor de Peverel. 49 E. 3. 24. honor de Egles. 9 H. 6. 27. 36 H. 8. Dier 58. honor de Glouc. F. N. B. 265. honor Abbath. de Merle. 5 E. 4. 129. 7 H. 6. 30. 1 E. 3. 4. &c. 13 E. 3. Jurisdict. 23. El. fo. 88. Lutterels caſe. 5 H. 7. 9. 14 H. 4. in recordo longo. 8 H. 4. Pl. Com. 168. 8 H. 7. 1. 4 E. 4. 16. 13 E. 3. Juriſdict. 23.

(e) 26 Aſſ. 34. 29 E. 3. 15. 29 H. 6. travers 4. Bract. fo. 434. 1 E. 3. 4. 5 H. 7. 9. 3 E. 2. Avowry 188. 37 H. 6. 26. 18 H. 6. 11. Lib. rubr. ſcac. fol. 18.

(f) In veter. Mag. Carta cap. de cheatris fol. 162. Britt. ca. 32. Rot. Parliam. 45 E. 3. m. 34. 6 H. 4. m. 19. 1 E. 4. cap. 1. Rot. Parl. 1 E. 3. 2. part. Alano Charleton. 22 E. 3. 3. part, Thoma Barkley, &c.

(g) Lamb. expoſit. verb. ferme. Pl. Com. 195.

(h) Pl. Com. 169. Regiſt. 227. b. eject. firmæ.

(i) 17 E. 3. fol. 8. 5 E. 3. 213. 16 E. 3. bre. 165. 12 E. 2. bre. 814.

(k) 4 E. 3. 161. 6 E. 3. 283. 2 E. 3. 3. 35 H. 6. 59. Pl. Com. 168. 7 Aſſ. 18. 21 Aſſ. 14. Lamb. expoſ. verb. Hyda & virgat. terræ. Glanvil lib. cap. Domeſday. Bract. lib. 2. cap. 26, 27. & lib. 4. fol. 434. Regiſt. 72.

(l) 34 E. 3. fine 99. 18. 3. fine 67. 29 H. 6. 8. 42. 3. 19. 8 E. 3. 377. Bracton fol. 180. 269. 431. 5 H. 3. Droit 66. Pl. Com. 168.

(m) 13 E. 2. bre. 247. 2 E. 3. 57. temp. E. 1. bre. 811. Pl. Com. 168.

(n) Pl. Com. 169. Linwood. 44 E. 3. 21. 4 E. 3. 32.

(o) 4 E. 3. tit. feoffments & faits 79. 14 E. 3. Formedon 34. 34 Aſſ. pl. 11.

Stagnum, or a pool, the water and land ſhall paſs alſo. (a) In the ſame manner, Gurges, a deep pit of water, a gorge or gulf, conſiſteth of water and land, and therefore by the grant thereof by that name the ſoil doth paſs, and a præcipe doth lye thereof; and he ſhall lay his eſplæs in taking of fiſhes, as Breams and Roches. In Domeſday it is called guort, gort, and gors plurally, as for example, de 3. gorz mille anguillæ.

(b) So it is of a Forreſt, Park, Chaſe, Vivary, and Warren, in a mans own Ground, by the grant of any of them, not onely the priviledge but the land it ſelf paſſes, for they are compound. In the Book of Domeſday that is called leuvad and leuga, and leuved and leuve, which in Latine is called leuca.

(c) Stadium, or ferlingus ſive ferlingum, or quarentena terræ, is a furlong of Land, and is as much as to ſay a furrow-long, which in ancient time was the eighth part of a mile; and land will paſs by that name. And ſome hold, that by that name land may be demanded. And de ferlingis & quarentenis you ſhall read divers times in the Book of Domeſday, and there you ſhall read, In inſula Rex habet unum fruſtum terræ, unde exeunt ſex vomeres. Nota fruſtum ſignifieth a parcell. (d) Warectum, or Wareccum, or varectum, doth ſignify fallow; Terra jacet ad Warectum, the land lieth fallow: but in truth the word is vervactum, quaſi vere novo victum ſeu ſubactum, terra novalis ſeu requieta, quia alternis annis requieſcat. (e) Tam culta novalia. (f) By the grant of a meſſuage, or houſe, meſſuagium, the orchard, garden and curtilage do paſs; and ſo an acre or more may paſs by the name of an houſe. It is derived of the French word Meſe. (g) In Domeſday, a houſe in a City or Burrough is called haga; other houſes are called there manſiones, manſuræ, & domus: (h) and in an ancient plea concerning Feverſham in Kent, hawes are interpreted to ſignify manſiones. In Norman French it is called meſiul or meſuil. Bye ſignifieth a dwelling, bye an habitation, and byan to dwell.

It is to be noted, that in Domeſday there be often named bordarii ſeu borduanni, coſces, coſcet, cotucami, cotarii, all in effect boores, or husbandmen, or cottagers; ſaving that bordarii, which cometh of the French word borde for a cottage, ſignifieth there boores holding a little houſe with ſome land of husbandry bigger then a cottage; and coterelli are meer cottagers, qui cotagia & curtilagia tenent.

Villani in Domeſday (often named) are not taken there for bondmen, but had their name de villis, becauſe they had Fermes, and there did work of husbandry for the Lord; and they were ever named before bordarii, &c. and ſuch as are bondmen are called there ſervi.

(i) Coleberti, often alſo named in Domeſday, ſignifieth Tenants in free ſocage by free rent, and to it is expounded of record. Radmans and Radchemiſters, (Rad, or rede, ſignifieth firm and ſtable) there alſo often named, are liberi tenentes qui arabant & herciebant ad curiam domini, ſeu falcabant, aut metebant, becauſe their eſtates are firm and ſtable: and they are many times called Sochemans and Sokemanni, becauſe of their plough ſervice.

Dreuchs ſignifieth free Tenants of a Manner, there alſo named. Taini or thaini mediocres were freeholders, and ſometime called milites regis, and their land called Tainland, and there it is ſaid, hæc terra T R E fuit Tainland, ſed poſtea converſa in Reveland. (k) But thainus regis is taken for a Baron, for it is ſaid in an ancient Author, Thainus regis proximus Comiti eſt; & ibidem, mediocris thainus, & alibi, Baro, ſive thainus. Berquarium or Bercaria cometh of Berc, an old Saxon word, uſed at this day for barks or rinds of trees, and ſignifieth a Tanhouſe, or a heath-houſe, where barks or rindes of trees are laid to tan withall: and Berquarii are mentioned in Domeſday. It ſignifieth alſo, and more legally, a ſhepcoat, of the French word Bergerie.

(l) By Vaccaria in Law is ſignified a Dairy-houſe, derived of Vacca the cow. In Latine is is Lactarium or Lactitium: and vaccarius is mentioned in Domeſday. And Fleta maketh alſo mention of porcaria a ſwine-ſty.

The content of an Acre is known, the name is common to the Engliſh, German, and French. In legal Latine it is called Acra, which the Latiniſts call jugerum. In Domeſday it is called Arpen prati, ſylvæ, &c. 10 R.1. inter fines, Acra in Cornwall continet 40. perticatas in longitudine, & 4. in latitudine, & quælibet perticata de 16. pedibus in longitudine.

(m) By the grant of a Delton of land, Selio terræ, a ridge of land, which containeth no certainty, for ſome be greater and ſome be leſſer, and by the grant de una porca, a ridge doth paſs. Selio is derived of the French word Sellon for a ridge.

(n) By the grant de centum libratis terræ, or 50. libratis terræ, or centum ſolidatis terræ, &c. land of that value paſſeth, and ſo of more or leſs: and in ancient time by that name it might have been demanded. And many things may paſs by a name, that by the ſame name cannot be demanded by a præcipe, (for that doth require more preſcript form:) but whatſoever may be demanded by a præcipe, may paſs by the ſame name by way of grant.

Frythe is a plain between woods, and ſo is lawnd or lound. Combe, hope, dene, glyn, hawgh, howgh, ſignifie a Valley; Howe, hoo, knol, law, peu, and cope, a hill. Ey, Ing and worth, ſignifie a watry place of water. Faleſia is a bank or hill by the ſea-ſide, it cometh of falaize, which ſignifieth the ſame. Of all theſe you ſhall read in ancient Books, charters, deeds,

and

(a) 13 E.3.4. 4 E.3.1 13. 8 E.2.381. 10 E.3.482. 13 E.3. entry 57. F.N.B. 191. h. Domeſday.

(b) Temps E.1. bre.861. 4 E.3.5. 10 H.7.30. 44 E.3.12. 43 E.3.24. 35 H.6 55. 3 H.6.2. Domeſday. Bracton lib.4. fo.235. Int. adjudicat. coram Rege. P. 39 E.3. lib.2. fol.95. in Theſaur.

(c) 40 Aſſ.38. 4 H.6.14. 35 E.1. cap.6. Anno 10 R.1. Inter fines in Theſaur. Ferlingus terræ continet 32. acras.

Domeſday. Fruſtum. 16 E.3. tit. common 9.

(d) Mich. 8 H.3. incipien. 9. Coram Rege, War. Ro.6.

(e) Virg. eclog.1.

(f) Bract. 211.233. 22 E.4. 1rn. 140. Pl. Com.168.171. 23 H.8. Br. feoffments 53. 9 Aſſ.p.21. 35 H.6.44. Pl. Com.169.

(g) Domeſday.

(h) Paſch.30 E.1. coram Rege, Kanc. in Theſaur. Statut. de extent. manerii. Domeſday.

Domeſday.

(i) In. placit. coram domino Rege, Mich. 10 E.3. Rot.26.

Lamb. Expoſit. verb. Thanus.

(k) Lib. Rub. cap.15. & c.41. & 76. W.2. cap.46. 7 H.4.38. Lib. dentries tit. Aſſ. corps pol.2.

Domeſday.

(l) 7 H.4.38. Fleta lib.2. cap.35.

Domeſday. 10 R.1. Inter fines.

(m) 9 E.3.39. Temps E.1. Br.866. Mich. 30 E.1. coram Rege, Gloc. in Theſaur.

(n) Bract.fo.377.431. 43 E.3.27. Regiſt. fo.1.94. 248, 249. F.N.B. fo.87. F.I. Regula.

(p) 7 R.1. inter fines Suſſex.

and records, and to the end that our ſtudent ſhould not be diſcouraged for want of knowledge when he meeteth with them (neſcit enim generoſa mens ignorantiam pati) we have armed him with the ſignification of them, to the end he may proceed in his reading with alacrity, and ſet upon, and know how to work into with delight theſe rough mines of hidden treaſure.

(m) By the name of Minerva, or Fodina Plumbi, &c. the land it ſelf ſhall paſs in a grant if livery be made, and alſo be recovered in an aſſiſe, & ſic de ſimilibus.

(m) 17 E. 3. 7. 43 E. 3. 35. b. Regiſt. 165. 10 H. 7. 21. Pl. Com. 191. 193. Brack. 211. 326.

By the grant of a fould courſe, or the like, lands and tenements may paſs. (n) Tenementum, Tenement, is a large word to paſs, not only lands and other inheritances which are holden; but alſo offices, rents, commons, profits apprender out of lands, and the like, wherein a man hath any frank tenement, and whereof he is ſeiſed ut de libero tenemento. But hæreditamentum, hereditament, is the largeſt word of all in that kind: for whatſoever may be inherited is an hereditament, be it corporeal or incorporeal, real, or perſonal, or mixt.

(n) 45 E. 3. Vouchee 72. 33 E. 3. grant 102. 11 H. 6. 22. 27. 14. E 4. 4. 3. Aſs. p. 9. 3 E. 4. 19. 11 H. 7. 25.

(o) A man ſeiſed of lands in fee hath divers Charters, deeds and evidences, and maketh a feoffment in fee, either without warranty, or with warranty only againſt him and his heirs, the purchaſer ſhall have all the Charters, deeds and evidences, as incident to the lands, & ratione terræ, to the end he may the better defend the land himſelf, having no warranty to recover in value, for the evidences are as it were the ſhews of the land, and the feoffor being not bound to warranty, hath no uſe of them. But if the feoffor be bound to warranty, ſo that he is bound to render in value, then is the defence of the title at his peril, and therefore the feoffee in that caſe ſhall have all deeds that comprehend warranty, whereof the feoffor may take advantage. Alſo he ſhall have ſuch Charters as may ſerve him to derayne the warranty paramount; Alſo he ſhall have all deeds and evidences, which are material for the maintenance of the title of the land, but other evidences which concern the poſſeſſion, and not the title of the land, the feoffee ſhall have them.

(o) Lib. 1. fol. 1. & 2. in Seignior Buckhurſts caſe. 44 E. 3. 11. b. 39. E. 3. 17. a 19 H. 6. 65. b. 4. H. 6. 2. 2. 10 E. 4. 9. b. 18 E. 4. 24. 13. 6 H. 7. 3. b. 3 H. 7. 33. 2.

¶ *Aver & tener.* Theſe two words do in this place prove a double ſignification, viz. a Aver to have an eſtate of inheritance of lands defendable to his heirs, and Tener to hold the ſame of ſome ſuperior Lord.

There have been eight formal or orderly parts of a deed of feoffment, viz. 1. the premiſſes of the deed implyed by Littleton. 2. the habendum whereof Littleton hath ſpoken. 3. the tenendum mentioned by Littleton. 4. the Reddendum. 5. the Clauſe of warranty. 6. the in cujus rei teſtimonium, comprehending the ſealing. 7. The date of the deed containing the day, the month the year, and ſtile of the King, or of the year of our Lord. (p) Laſtly, the clauſe of his teſtibus: and yet all theſe parts were contained in very few and ſignificant words. (q) Hæc fuit candida illius ætatis fides & ſimplicitas, quæ pauculis lineis omnia fidei firmamenta poſuerunt.

Vide Sect. 40. & 370. 371. many things, de cauſis & effectis, Fleta lib. 3. cap. 14. Britton 100. 101. Bracton lib. 5. fol. 396. a. 399. 38 H. 6. 32. 36. Pl. Com. Wrotesleys caſe. fol. 96.

(p) Vide Throgmortons caſe, Pl. Com.

(q) Lib. 6. fol. 43. in Sir Anthony Mildmayes caſe, Vide ſect. 378.

The office of the premiſſes of the Deed is twofold. Firſt, rightly to name the feoffor and the feoffee. And ſecondly, to comprehend the certainty of the lands or tenements to be conveyed by the feoffment, either by expreſs words, or which may by reference be reduced to a certainty; for Certum eſt quod certum reddi poteſt. The habendum hath alſo two parts, viz. firſt, to name again the feoffee, and ſecondly, to limit the certainty of the eſtate. The Tenendum of this hap where the fee ſimple paſſes, muſt be of the chief Lords of the fee. And of the Reddendum more ſhall be ſaid in his proper place, in the Chapter of Rents. Of the Clauſe of warranty more ſhall be ſaid in the chapter of warranties. In cujus rei teſtimonium ſigillum meum appoſui was added; for the Seal is of the eſſential part of the deed. The date of the deed many times Antiquity omitted, and the reaſon thereof was, For that the limitation of preſcription, or time of memory, did often in proceſs of time change, and the law was then holden, that a deed bearing date before the limited time of preſcription, was not pleadable, and therefore they made their deeds without date, to the end they might alleage them within the time of preſcription. And the date of the deeds was commonly added in the reign of E. 2. and E. 3. and ſo ever ſince.

Brit. fol. 101.

And ſometime Antiquity added a place, as Datum apud D. which was in diſadvantage of the feoffee, for being in general, he may alleage the deed to be made where he will. And laſtly, Antiquity did add, his teſtibus in the continent of the deed, after the In cujus rei teſtimonium, written with the ſame hand that the deed was, which witneſſes were called, the Deed read, and then their names entred. (r) And this is called charter land, and accordingly the Saxons called it Bockland, as it were book land. (which clauſe of his teſtibus in ſubjects deeds continued until and in the reign of H. 8. but now is wholly omitted. And it appeareth by the ancient Authors and Authorities of the Law, that before the Statute of 12. E. 2. cap. 2. Proceſs ſhould be awarded againſt the witneſſes named in the deed, teſtes in carta nominatos, (s) and that the ſame Statute was but an affirmance of the common Law, which not being well underſtood, hath cauſed variety of opinions in our books. But the delay therein was ſo great, and ſometimes (though rarely) by exceptions againſt thoſe witneſſes, which being found true, they were not to be ſworn at all, neither to be joyned to the Jury, nor as witneſſes, (t) as if the witneſs were infamous; for example, if he be attainted of a falſe verdict, or of a conſpiracy at the

(r) Lamb. expoſit. verb. terra ex ſcripto. Vide Forteſcue cap. 32. See the ſecond part of the Inſtitut. cap. 38. 12 E. 2. c. 2. ſee the ſecond part of the Inſtitutes. Marlbr. cap. 6. & cap. 24.

(s) Brit. fol. 65. 101. 11 E. 3. Proces 170. 6 H. 3. Proces 209. 8 H. 3. Proces 210. 4 E. 2. Gard. 119.

(t) Mirrour. cap. 4. ſect. de Infamies & perjurie. Glanvil. lib. 2. cap. 15. Bract. lib. 3. 288. 292. Brit. fol. 134. 135. 101. Fleta lib. 5. cap. 21. 8 E. 2. Aſſ. 396. 2 E. 3. 22. 24. E. 3. 34.

ſuit of the king, or condicted of perjury, or of a Præmunire or of forgery upon the Statute of 5. Eliz. cap. 14. and not upon the Statute of 1 H. 5. cap. 3. or condict of felony, or by judgment loſt his ears, or ſtood upon the pillory or tumbrell, or been ſtigmaticus branded, or the like, whereby they become infamous for ſome offences. Quæ ſunt minoris culpæ ſunt majoris infamiæ. (c) If a Champion in Writ of right become recreant or coward, he thereby loſeth liberam legem, and thereby becomes infamous, & cannot be a witneſs, for regularly he that loſeth liberam legem, becommeth infamous, and can be no witneſs. Or if the witneſs be an Infidel, or of non ſane memorie, or not of diſcretion, or a party intereſſed, or the like. (d) But oftentimes a man may be challenged to be of a Jury, that cannot be challenged to be a Witneſs, and therefore though the Witneſs be of the neereſt alliance or kindred, or of counſel, or tenant, or ſervant to either party, (or any other exception that maketh him not infamous, or to want underſtanding or diſcretion, or a party in intereſt) though it be proved true, ſhall not exclude the witneſs to be ſworn, (e) but he ſhall be ſworn, and his credit upon the exceptions taken againſt him left to thoſe of the Jury, who are triers of the fact, inſomuch as ſome Books have ſaid, that though the witneſs named in the Deed be named a Diſſeiſor in the writ, yet he ſhall be ſworn as a witneſs to the deed. (f) A witneſs amongſt others named in a deed was outlawed, and no Proceſs was awarded againſt him by the Statute, becauſe he was extra legem, and an outlawed perſon cannot be an Auditor. And the Court in ſome books have ſaid, that they have not ſeen witneſſes challenged, which is regularly to be underſtood with the limitations above-ſaid, but ſuch as are returned to be of a Jury, are to be challenged for the cauſes aforeſaid for outlawry, & divers other cauſes (for the which a witneſs cannot be challenged) and ſuch Proceſs againſt witneſſes vaniſhed. But ſeeing the witneſſes named in a deed ſhall be joyned to the Inqueſt, and ſhall in ſome ſort joyn alſo in the verdict (in which caſe if Jury and Witneſſes find the Deed that is denied to be the Deed of the party, the adverſe party is barred of his attaint, becauſe there is no more than twelve that affirm the verdict.) It is reaſon that in that caſe of joyning, ſuch exception ſhall be taken againſt the witneſs as againſt one of the Jury, becauſe he is in the nature of a Juror. (a) And therefore to put one example, If he be outlawed in a perſonal action, he cannot be joyned to the Jury; but yet that is no exception againſt him, to exclude him to be ſworn as a Witneſs to the Jury. And the reaſon of all this, is, for that if he with others ſhould joyn in verdict with the Jury in affirmance of the Deed, the party ſhould be barred of his Attaint. But note, there muſt be more than one witneſs, that ſhall be joyned to the Inqueſt. And albeit they joyn with the Jury, and find it not his Deed, notwithſtanding this joyning, the party ſhall have his attaint, for it is a maxim in Law, (b) That Witneſſes cannot teſtifie a negative, but an affirmative. And if one of the witneſſes named in the Deed be one of the pannel, he ſhall be put out of the pannel, and all theſe ſecrets of Law do notably appear in our books.

To put up this point, It is to be known, (c) that when a trial is by witneſſes, regularly the affirmative ought to be proved by two or three witneſſes, as to prove a ſummons of the Tenant, or the challenge of a Juror, and the like. But when the trial is by verdict of 12. men, there the judgment is not given upon witneſſes, or other kind of evidence, but upon the verdict, and upon ſuch evidence as is given to the Jury they give their verdict. And Bracton ſaith, there is probatio duplex, Viz. Viva, as by witneſſes, viva voce; & Mortua, as by deeds, writings, and inſtruments. And many times Juries, together with other matter, are much induced by præſumptions, whereof there be three ſorts, viz. violent, probable, and light or temerary. Violenta præſumptio is many times plena probatio, as if one be run thorow the body with a ſword in a houſe whereof he inſtantly dieth, and a man is ſeen to come out of that houſe with a bloody ſword, and no other man was at that time in the houſe. Præſumptio probabilis, moveth little, but Præſumptio levis ſeu temeraria, moveth not at all. So it is in the caſe of a Charter of feoffment, if all the witneſſes to the Deed be dead (as no man can keep his witneſſes alive, and time weareth out all men) then violent præſumption, which ſtands for a proof, is continual and quiet poſſeſſion, for ex diuturnitate temporis omnia præſumuntur ſolenniter eſſe acta alſo the Dead may receive credit, per collationem ſigillorum, ſcripturæ, &c. &, Super fidem chartarum mortuis teſtibus erit ad patriam de neceſſitate currendum.

Note, it hath been reſolved by the Juſtices, that a wife cannot be produced either againſt or for her husband, quia ſunt duæ animæ in carne una, and it might be a cauſe of implacable diſcord and diſſenſion between the husband and the wife, and a mean of great inconvenience, but (d) in ſome caſes women are by Law wholly excluded to bear teſtimony, as to prove a man to be a Villein, Mulieres ad probationem ſtatus hominis admitti non debent. It was alſo agreed by the whole Court, (e) that in any information upon the Statute of Uſury, the party to the uſurious contract ſhall not be admitted to be a witneſs againſt the Uſurer, for in effect he ſhould be teſtis in propria cauſa, and ſhould avoid his own bonds and aſſurances, and diſcharge himſelf of the money borrowed, and though he commonly raiſe up an Informer to exhibit the Information, yet, in rei veritate, he is the party. And herewith in effect agreeth Brit-

ton

43 E. 3. Conſpir. 11.
27. Aſſ. 59.
33. H. 6. 55. 21. H. 6. 30.
(c) Forteſcu. cap. 26.
Par. 55 H. 3. m. 3.
Stanf. Pl. Cor. 174. a.

(d) Forteſcu. cap. 25.

(e) 22. Aſſ. 12. & 41.
23. Aſſ. 11.
19 E. 2. tit. Aſſ. 409.

(f) 34 E. 1. Proces. 208.

(a) 34 E. 1. tit. proces 208.
11. Aſſ. p. 19. 20. 12. Aſſ. p. 1. 12. 41. 18. Aſſ. p. 11.
22. Aſſ. 18. 23. Aſſ. 15.
40. Aſſ. 23. 48. Aſſ. p. 5.
21 H. 6. 30.

(b) 48 E. 3. 30. 12. H. 6. fo. 6. 2. 50. E. 3. 16. 43. E. 3. 32.
12. H. 4. 9. 19. E. 2. Aſſ. 408.
Paſch. 14. E. 3. coram rege Devon. in Theſaur.
Fleta. lib. 6. cap. 6.
F. N. B. 106. h. & 97. e.
(c) Mirrour cap. 3.
Pl. Com. fo. 10.
Bract. lib. 5. fo. 400.

Fleta lib. 6. cap. 33.
8 E. 3. 290. 39. E. 3. 21. b.

Glanvil. lib. 10. cap. 12.
Fleta lib. 6. cap. 33.

Paſch. 10. Ja. in Com. Banco upon the ſtat. of Bankrouts.
(d) Fleta. lib. 2. cap. 44.
13 E. 1. tit. Vill. 36, 37.
19 E 1. Ibid. 32.
(e) Tr. 8. Ia. in Com. Banco. Smiths caſe.
In evidence upon an information upon the ſtatute of Uſury.
Brit fol. 134.

ton, that he that challengeth a right in the thing in demand, cannot be a witneſs, for that he is a party in intereſt. But now let us return to that from which by way of digreſſion (upon this occaſion) we are fallen.

And the ancient Charters of the King which paſſed away any franchiſe or revenue of any eſtate of inheritance, had ever this clauſe of his teſtibus, of the greateſt men of the Kingdom, as the Charters of creation of Nobility, yet have at this day: when his teſtibus was omitted, and when teſteme ipſo came in into the Kings grants, you ſhall read in the ſecond part of the Inſtitutes, Mag. Chart. cap. 38. I have termed the ſaid parts of the Deed, formal or orderly parts, for that they be not of the eſſence of a Deed of feoffment, for if ſuch a Deed be without præmiſes, habendum, tenendum, reddendum, clauſe of warranty, the clauſe of In cujus rei teſtimonium, the Date and the clauſe of his teſtibus, yet the Deed is good. (f) For if a man by Deed give lands to another and to his heirs, without more ſaying, this is good, if he put his Seal to the Deed, deliver it, and make livery accordingly. (g) So it is if A. give lands, to have and to hold, to B. and his heirs, this is good, albeit the Feoffee is not named in the premiſſes. And yet no well adviſed man will truſt to ſuch Deed which law by conſtruction maketh good ut res magis valeat, but when form and ſubſtance concur, then is the Deed fair and abſolutely good.

(f) Mirr. 6. cap. 1. ſect. 6. cap. 5. ſect. 1. Glanvil. lib. 10. cap. 12. Bract. lib. 5. fol. 396. Fet. li. 6. c. 32. Britt. f. 66.

(g) Vid. Tearms of the Law, verb. faits.

The ſealing of Charters and Deeds is much more ancient than ſome, out of errour, have imagined, for the Charter of the King Edwin, brother of King Edgar, bearing date Anno Domini, 956 made of the land called Jecklea in the Iſle of Ely, was not only ſealed with his own Seal (which appeareth by theſe words, Ego Edwinus gratia Dei totius Britannicæ telluris Rex meum donum proprio ſigillo meo confirmavi) but alſo the Biſhop of Wincheſter put to his Seal, Ego Ælfwinus Winton Eccleſiæ divinus ſpeculator proprium ſigillum impreſſi. And the Charter of King Offa, whereby he gave the Peter pence, doth yet remain under Seal. But no King of England, before or ſince the conqueſt, ſealed with any ſeal of Arms, before King R. 1. but the Seal was the King ſitting in a chair on the one ſide of the Seal, and on horſe back on the other ſide in divers forms. And King R. 1. ſealed with a Seal of two Lyons for the Conqueror for England bare two Lyons and King John in the right of Aquitain (the Dube whereof bare one Lyon) was the firſt that bare three Lyons, and made his Seal accordingly, and all the Kings ſince have followed him. And King E. 3. anno 13. of his reign, did quarter the Arms of France with his three Lyons, and took upon him the title of King of France, and all his Ducceſſors have followed him therein.

Vid. Mir. c. 1. ſect. 3. c. 3.

In ancient Charters of feoffment there was never mention made of the delivery of the deed or any livery of ſeiſin indorſed, for certainly the witneſſes named in the Deed, were witneſſes of both: and witneſſes either of delivery of the deed, or of livery of ſeiſin by expreſs terms was but of later times, and the reaſon was in reſpect of the notoriety of the feoffment. And I have known ſome ancient deeds of feoffment having livery of ſeiſin indorſed ſuſpected, and after detected of forgery. As if a Deed in the ſtile of the King, name him Defenſor fidei before 13. H. 8. or Supreme Head before 20 H. 8. at what time he was firſt acknowledged ſupreme head by the Clergy, albeit the King uſed not ſtyle of Supreme head in his Charters, &c. till 22 H. 8. or King of Ireland, before 33. H. 8. at which time he aſſumed the title of the King of Ireland, being before that called Lord of Ireland, it is certainly forged, & ſic de ſimilibus.

21 H. 8. ca. 16.

And ſome have obſerved that Grace was attributed to King H. 4. Excellent Grace to King H. 6. Majeſty to King H. 8. and before, the King was called, Soveraign Lord, Leige Lord, Highneſs, and Kingly Highneſs, which in Latine in legal proceedings is called Regia Celſitudo, as the beginning of the petition of right to the King is. Humilimè ſupplicavit veſtræ Celſitudini regiæ, &c. and the like. And upon this occaſion it ſhall not be impertinent, ſeeing it is part of the formal Deed, to ſet down the ſeveral ſtiles of the Kings of England ſince the Conqueſt.

Vid. 2 H. 4. c. 15. where Royal Majeſty is attributed to the King, and Crimen læſæ Majeſtatis, is far more ancient.

William the Conqueror commonly ſtiled himſelf Willielmus Rex, and ſometimes Willielmus Rex Anglorum. And the like did William Ruſus, and ſometimes Willielmus Dei gratia Rex Anglorum.

Henry the firſt, Henricus Rex Anglorum, and ſometimes Henricus Dei gratia Rex Anglorum.

Mawde the ſole Daughter and heir of H. 1. wrote, Matildis Imperatrix Henrici Regis filia & Anglorum Domina. Divers of whoſe creations and grants I have ſeen.

King Stephen uſed the ſtile that King H. 1. did.

Henry the 2. Fitz Emprice omitted Dei gratia, and uſed this ſtile, Henricus Rex Angliæ, Dux Normanniæ, & Aquitaniæ, & Comes Andegaviæ, he having the Dutchy of Aquitain, and Earldom of Poitiers in the right of Elianor his wife heir to both: And the Earldoms of Anjowe, Tournie, and Maine, as ſon and heir to Jeffery Plantagenet by the ſaid Mawde his wife, daughter and ſole heir of King H. 1. She was firſt married to Henry the Emperour, and after his death to the ſaid Jeffery Plantagenet. (Which Dutchy of Aquitain both include Gaſcoign and Guien.

King R. 1. uſed the ſtile that H. 2. his father did, yet was he King of Cyprus, and after of Jeruſalem, but never uſed either of them.

King John uſed that ſtile, but with this addition Dominus Hiberniæ, and yet all that he had in Ireland was conquered by his father King H. 2. which title of Dominus Hiberniæ, he aſſumed as annexed to the Crown, albeit his father, in the 23. year of his reign, had created him King of Ireland in his life time.

King H 3. ſtiled himſelf as his father King John did, until the 44. year of his reign, and then he left out of his ſtile Dux Normaniæ, & Comes Andigaviæ, and wrote only Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ.

King E. 1. ſtiled himſelf in like manner as King H. 3. his father did, Rex Angliæ, Dominus Hiberniæ & Dux Aquitaniæ. And ſo did King E. 2. during all his reign. And King E. 3. uſed the ſelf ſame ſtile until the 13. year of his reign, and then he ſtiled himſelf in this form, Edwardus Dei gratia Rex Angliæ, & Franciæ, & Dominus Hiberniæ, leaving out of his ſtile Dux Aquitaniæ, he was King of France, as ſon and heir of Iſabel wife of King E. 2. daughter and heir of Philip le Beau King of France, he firſt quartered the French Armories with the Engliſh in his great Seal, Anno Domini 1338. & regni ſui 14.

King R. 2. and King H. 4. uſed the ſame ſtile that King E. 3. did. And King H. 5. until the 8. year of his reign continued the ſame ſtile, and then wrote himſelf, Rex Angliæ, Hæres & Regens Franciæ, & Dominus Hiberniæ, and ſo continued during his life.

King H. 6. wrote, Henricus Dei gratia Rex Angliæ, & Franciæ, & Dominus Hiberniæ; this King being crowned in Paris King of France uſed the ſaid ſtile 39 years, till he was diſpoſſeſſed of the Crown by King E. 4. who after he had reigned alſo about ten years, King H. 6. was reſtored to the Crown again, and then wrote, Henricus Dei gratia Rex Angliæ & Franciæ, Dominus Hiberniæ ab inchoatione regni ſui 49. & recaptionis regiæ poteſtatis primo.

King E. 4. R. 3. and H. 7. ſtiled themſelves, Rex Angliæ & Franciæ, & Dominus Hiberniæ.

King H. 8. uſed the ſame ſtile till the tenth year of his reign, and then he added this word (Octavus) as Henricus octavus Dei gratia, &c. In the 13 year of his reign he added to his ſtile Fidei Defenſor. In the 22 year of his reign in the end of his ſtile he added Supremum Caput Eccleſiæ Anglicanæ. And in the 23 year of his reign he ſtiled himſelf thus, Henricus octavus Dei gratia Angliæ Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. & in terra Eccleſiæ Anglicanæ & Hiberniæ ſupremum caput.

Vid. Rot. Parliam. anno 1 H. 6. nu. 15. he was ſtiled Rex Franciæ & Angliæ & Dominus Hiberniæ.

King E. 6. uſed the ſame ſtile, and ſo did Queen Mary in the beginning of her reign, and by that name ſummoned her firſt Parliament, but ſoon after omitted Supremum Caput. And after her marriage with King Philip the ſtile notwithſtanding that omiſſion was the longeſt that ever was, viz. Philip and Mary by the Grace of God King and Queen of England and France, Naples, Jeruſalem and Ireland, Defenders of the Faith, Princes of Spain and Cicily, Archdukes of Auſtria, Dukes of Millain, Burgundy and Brabant, Countees of Hasburgh, Flanders and Tyrol. And this ſtile continued till the fourth and fifth year of King Philip and Queen Mary and then Naples was put out, and in place thereof both the Cicilies put in, and ſo it continued all the life of Queen Mary.

I need not mention the ſtile of Queen Elizabeth, King James, nor of our Soveraign Lord King Charls, becauſe they are ſo well known, and I fear I have been too long concerning this point, which certainly is not unneceſſary to be known for many reſpects. But to ſhew the cauſes and reaſons of theſe alterations would ask a Treatiſe of it ſelf, and doth not ſort to the end that I have aimed at. And now let us return to the learning of Charters and Deeds of Feoffments and Grants.

Very neceſſary it is that Witneſſes ſhould be underwritten or indorſed, for the better ſtrengthning of Deeds and their names (if they can write) written with their own hands. For Livery of ſeiſin See hereafter, Sect. 59. and for Deeds, Sect. 66. and of Conditional Deeds, ſee our Author in his Chapter of Conditions. And now let us proceed to the other words of our Author.

Livery of ſeiſin incident to a feoffment. Vid. ſect. 59.

¶ *A lvy & a ſes heires.* Hæres, in the legal underſtanding of the Common Law, implyeth that he is ex juſtis nuptiis procreatus, for hæres legitimus eſt quem nuptiæ demonſtrant, and is he to whom lands, tenements, or hereditaments by the act of God and right of blood do deſcend of ſome eſtate of inheritance, for Solus Deus hæredem facere poteſt non homo: dicuntur autem hæredes & hæres ab hærendo, quod eſt arctè inſidendo, nam qui hæres eſt, hæret, vel dicitur ab hærendo quia hæredes ſibi hæret, licet nonnulli hæredem dictum velint quod hæres fuit, hoc eſt dominus terrarum, &c. quæ ad eum perveniunt.

Mirr. ca. 2. ſect. 15. Bract. lib. 2. fol. 62. b. Flet. lib. 6. cap. 1. & 54. & lib. 1. cap. 13. Glanvil. lib. 7. cap. 1. & cap. 12, & 13.

A monſter which hath not the ſhape of mankind, cannot be heir or inherit any land, albeit it be brought forth within marriage, (a) but although he hath deformity in any part of his body, yet if he hath humane ſhape he may be heir. Hi qui contra formam humani generis converſo more procreantur, ut ſi mulier monſtroſum, vel prodigioſum enixa, inter liberos non computentur, partus tamen cui natura aliquantulum ampliaverit vel diminuerit, non tamen ſuperabundanter (ut ſi ſex digitos vel niſi quatuor habuerit) bene debet inter liberos connumerari;

(a) Bract. lib. 5. fol. 437, 438. Britt. cap. 66. fol. 167. & cap. 83. Fleta lib. 1. cap. 5.

Si

Si inutilia natura reddidit, ut ſi membra tortuoſa habuerit, non tamen is partus monſtroſus. Another ſaith, Ampliatio ſeu diminutio membrorum non nocet. (b) A baſtard cannot be heir, for (as hath been ſaid before) qui ex damnato coitu naſcuntur inter liberos non computentur. Every heir is either a male, or female, or an Hermaphrodite, that is, both male and female. And an Hermaphrodite (which is alſo called Androgynus) ſhall be heir, either as male or female, according to that kind of the ſex which doth prevail. Hermaphroditæ, tam maſculo, quam fœminæ comparatur ſecundum prævaleſcentiam ſexus incaleſcentis. And accordingly it ought to be baptized. See more of this matter, Sect. 35.

b) Vid. ſect. 118.399. Bract.lib.2. fol.92. Brit. fo. Fleta lib.1. ca.5. & l.6. c.8. Fleta ubi ſupra. 3 Ri.2. Entr. cong.38.

(c) A man ſeiſed of lands in fee hath iſſue an Alien that is born out of the Kings ligeance, he cannot be heir, propter defectum ſubjectionis, albeit he be born within lawful marriage. If made Denizen by the Kings Letters Patents, yet cannot he inherit to his father or any other. But otherwiſe it is if he be naturalized by Act of Parliament, for then he is not accounted in Law Alienigena, but Indigena. But after one be made Denizen, the iſſue that he hath afterwards ſhall be heir to him but no iſſue that he had before. If an Alien cometh into England and hath iſſue two ſons, theſe two ſons are Indigenæ ſubjects born, becauſe they are born within the Realm. And yet if one of them purchaſe lands in fee, and dieth without iſſue, his brother ſhall not be his heir, for there was never any inheritable blood between the father and them, and where the ſons by no poſſibility can be heir to the father, the one of them ſhall not be heir to the other. See more at large of this matter, Sect. 198.

c) Mirror. ca.1. ca.3. ſect.ca.5. ſect. Bract.l.5. fol. 415.127. Brit. fo.27. Fleta lib.6.ca.47. 13 E.3. br.677. 25 E.3. de natis ultra mare. 31 E.3. Coſinage 5. 42 E.3.2. 11 H.4.26. 14 H.4.19,20. 3 H.6.55. 22 H.6.38.9 E. 4.7. lib.7. fo.1.in Calvins caſe.

If a man be attainted of treaſon, or felony, although he be born within wedlock, he can be heir to no man, nor any man heir to him propter delictum, for that by his attainder his blood is corrupted. And this corruption of blood is ſo high, as it cannot abſolutely be ſalved, and reſtored but by act of Parliament, for albeit the perſon attainted obtain his Charter of pardon, yet that doth not make any to be heir whoſe blood was corrupted at the time of the attainder, either downward or upward. (d) As if a man hath iſſue a ſon before his attainder, and obtaineth his pardon, and after the pardon hath iſſue another ſon, at the time of the attainder, the blood of the eldeſt was corrupted, and therefore he cannot be heir. But if he dye living his father, the younger ſon ſhall be heir, for he was not in eſſe at the time of the attainder, and the pardon reſtored the blood as to all iſſues begotten afterwards. But in that caſe if the eldeſt ſon had ſurvived the father, the younger ſon cannot be heir, becauſe he hath an elder brother which by poſſibility might have inherited, but if the elder brother had been an Alien, the younger ſon ſhould be heir, for that the Alien never had any inheritable blood in him. See more plentifully of this matter, Sect. 646, 647.

1 E.3.4.6 E. 3.55. 27 E.3. 77. 3 E. 2. diſcent. br. 64. 31 E.1. diſcent. 17. 46 E. 3. Petition 20. 26 Aſſ.p.2. 49 Aſſ.p.4.29 Aſſ. p.11. 9 H 5.9. d) Stanf. pl.cor. 195,196. Bracton lib.2. fo.132. 133.276. & lib.5.fo.374. Britton fo.215. b. Fleta lib.1. ca.28.

If a man hath iſſue two ſons, and after is attainted of treaſon, or felony, and one of the ſons purchaſe lands and dieth without iſſue, the other brother ſhall be his heir, for the attainder of the father corrupteth the lineal blood only and not the collateral blood between the brethren, which was veſted in them before the attainder, and each of them by poſſibility might have been heir to the father, and ſo hath it been adjudged, (*) but otherwiſe in the caſe of the Alienee, as hath been ſaid. (e) But ſome have holden that if a man after he be attainted of treaſon or felony have iſſue two ſons, that the one of them cannot be heir to the other, becauſe they could not be heir to the father, for that they never had any inheritable blood in them.

*) In the Exchequer Mic. 40. & 41 Eliz. in the caſe de Hobby.
e) Bract. lib.30. fol.130. Britton fol. 15. Fleta lib.1. cap.58.

(f) One that is born deaf and dumb may be heir to another, albeit it was otherwiſe holden in ancient time. And ſo if born deaf, dumb and blind, for in hoc caſu, vitio parcitur naturali, but contract they cannot. Ideots, lepers, mad men, outlaws in debt, treſpaſſers, or the like, perſons excommunicated, men attainted in a Præmunire, or convicted of hereſy may be heirs.

f) Bract.lib.5. 421. 430.434. lib.2. fol.12. Fleta lib.9. ca 39.47. 14 H.3. Bre. 877.32 E.3. Age 8.10 E.3. 536. 18 E.3.53.13 E.3. Ley 49.

(g) If a man hath a wife, and dieth, and within a very ſhort time after the wife marrieth again, and within nine moneths hath a child, ſo as it may be the child of the one or the other. Some have ſaid, That in this caſe the child may chuſe his father, quia in hoc caſu filiatio non poteſt probari, and ſo is the Book to be intended, for avoiding of which queſtion and other inconveniencies, this was the Law before the Conqueſt. Sit omnis vidua ſine marito duodecem menſibus, & ſi maritaverit perdat dotem.

g) 21 E.3.39. Pancirollus nova rep. 485,&c. Opus eximium 48 b Lambard de priſcis Anglorum legibus 120.72. acc.

(h) A man by the Common Law cannot be heir to goods or Chattels, for hæres dicitur ab hæreditate. (i) If a man buy divers fiſhes, as Carps, Breams, Tenches, &c. and put them in his Pond, and dyeth, in this caſe the heir ſhall have them, and not the Executors, but they ſhall go with the inheritance, becauſe they were at liberty and could not be gotten without induſtry, as by nets, and other engines, otherwiſe it is if they were in a trunk or the like. Likewiſe Deer in a Park, Coneys in a Warren, and Doves in a Dove-houſe, young and old ſhall go to the heir. (k) But of ancient time the heir was permitted to have an Action of debt upon a bond made to his Anceſtor and his heirs, but the Law is not ſo holden at this day. Vid. Sect.12.

h) Bract.lib.4. ca.9. fol.265. lib.4. fo.62.b. Fleta lib.6.ca.1. Lib.8.fo.54. Syms caſe. i) Mich. 36. & 37 El. Rot.25. Inter Gray & Paulet in the Kings Bench. Stanford 25. b.18 E.4.8. 22 Aſſ.25.18 H.8.2. k) 13 E.1. det 325. 139,140. 47 E.3.23.25 E.1.fol.48. 26 E. 3. fo. Vid. for an heire-loome. hæreditarium or principalius, ſect.12.

(l) It is to be noted that one cannot be heir till after the death of his Anceſtor, he is called hæres apparens, heir apparant.

l) Mirror ca.1. ſect.3.

In our old Books and Records there is mention made of another heir, viz. hæres aſtrarius, ſo called of Aſtre, that is, an harth of a houſe, becauſe the Anceſtor by conveyance hath ſet his heir apparant, and his family in a houſe and living in his life time, of whom Bracton ſaith thus, (a) Item eſto quod hæres ſit aſtrarius, vel quod aliquis anteceſſor reſtituat hæredi in vita ſua hæreditatem, & ſe dimiſerit, videtur quod nullo tempore jacebit hæreditas, & ideo quod nec relevari poſſit, nec debet, nec relevium dari. (b) For the benefit and ſafety of right heirs contra partus ſuppoſitos, the Law hath provided remedy by the Writ De ventre inſpiciendo, whereof the rule in the Regiſter is this; Nota ſi quis habens hæreditatem duxerit aliquam in uxorem & poſtea moriatur ille ſine hærede de corpore ſuo exeunte, per quod hæreditas illa fratri ipſius defuncti deſcendere debeat, & uxor dicit ſe eſſe pregnantem de ipſo defuncto cum non ſit, habeat frater, & hæres breve de ventre inſpiciendo. It ſeemeth by Bracton and Fleta which followed him, that this Writ doth lye, Ubi uxor alicujus in vita viri ſui ſe pregnantem fecit cum non ſit, vel poſt mortem viri ſui ſe pregnantem fecit cum non ſit ad exhæredationem veri hæredis, &c. ad quærelam veri hæredis per præceptum domini regis, &c which is to be underſtood according to the rule of the Regiſter: when a man having lands in Fee ſimple dieth, and his wife ſoon after marrieth again, and feigns her ſelf with child by her former husband, in this caſe though ſhe be married, the Writ De ventre inſpiciendo doth lye for the heir. But if a man ſeiſed of lands in fee (for example) hath iſſue a daughter, who is heir apparant, ſhe in the life of her father cannot have this writ for divers cauſes; firſt, becauſe ſhe is not heir, but heir apparant, for as hath been ſaid, nemo eſt hæres viventis, and this Writ is given to the heir to whom the land is deſcended. And doth Bracton and Fleta ſaith, that this Writ lieth Ad querelam veri hæredis, which cannot be in the life of his Anceſtor, and herewith agræth Britton and the Regiſter. Secondly, the taking of a husband in the caſe aforeſaid being her own act, cannot bar the heir of his lawful Action once veſted in him. Thirdly, the Law doth not give the heir apparant any Writ, for it is not certain whether he ſhall be heir, ſolus Deus facit hæredes. Fourthly, the inconvenience were too great if heirs apparant in the life of their Anceſtor ſhould have ſuch a Writ to examine and try a mans lawful wife in ſuch ſort as the Writ De ventre inſpiciendo doth appoint, and if ſhe ſhould be found to be with child, or ſuſpect, then he muſt be removed to a Caſtle and there ſafely kept until her delivery, and ſo any mans wife might be taken from him againſt the Laws of God and man.

The words of the Writ De ventre inſpiciendo make this evident. Rex Vic. ſaluſtem, monſtravit nobis A. quod cum R. *quæ fuit uxor Clementis* B. prægnans non ſit, ipſa falsò dicit ſe eſſe prægnantem de eodem Clemente, *ad exhæredationem* ipſius A. deficut terra quæ fuit ejuſdem C. *ad ipſum A jure hæreditario deſcendere debeat* tanquam *ad fratrem & hæredem* ipſius C. ſi prædict. R. prolem de eo non habuerit, &c. But this rather belongs to the Treatiſe of original Writs, and therefore thus much herein ſhall ſuffice.

And it is to be obſerved that every word of Littleton is worthy of obſervation, firſt, (Heirs) in the plural number, for if a man give land to a man and to his heir in the ſingular number, he hath but an eſtate for life, for his heir cannot take a Fee ſimple by deſcent, becauſe he is but one, and therefore in that caſe his heir ſhall take nothing. Alſo obſervable is this conjunctive (Et,) For if a man give lands to one, To have and to hold to him or his heirs, he hath but an eſtate for life for the uncertainty. (Ses, ſuis) If a man give land unto two, To have and to hold to them two & hæredibus (c) omitting ſuis, they have but an eſtate for life for the uncertainty, whereof more hereafter in this Section. But it is ſaid, if land be given to one man, & hæredibus, omitting ſuis, that notwithſtanding a Fee ſimple paſſeth, but it is ſafe to follow Littleton.

¶ (d) *Et ſes aſſignes.* Aſſignæ cometh of the verb Aſſigno. And note there be Aſſigns in Deed, and Aſſigns in Law, whereof ſee more in the Chapter of Warranty, Sect. 733.

¶ *Ceux parolx (ſes heires) tantſolement font leſtate denheritance en touts feoffments & grants.* (e) Si autem facta eſſet donatio, ut ſi dicam, do tibi talem terram, iſta donatio non extendit ad hæredes ſed ad vitam donatoris, &c. (f) Here Littleton treateth of purchaſes by natural perſons, and not of Bodies politique or corporate; (g) for if lands be given to a ſole Body politique or corporate, (as to a Biſhop, Parſon, Vicar, Maſter of an Hoſpital, &c.) there to give him an eſtate of inheritance in his politick or corporate capacity, he muſt have theſe words, To have and to hold to him and his ſucceſſors, for without theſe words Succeſſors, in thoſe caſes there paſſeth no inheritance, for as the heir doth inherit to the Anceſtor, ſo the Succeſſor doth ſucceed to the Predeceſſor, and the Executor to the Teſtator. (h) But it appeareth here by Littleton, that if a man at this day give lands to I. S. and his Succeſſors, this createth no Fee ſimple in him, for Littleton ſpeaking of natural perſons ſaith that theſe words (his heirs) make an eſtate of inheritance in all Feoffments and Grants whereby he excludeth theſe words (his ſucceſſors.) (i) And yet if it be an ancient grant it muſt be expounded as the Law was taken at the time of the grant. (k) A Chantry Prieſt incorporate took a Leaſe to him

(a) Bract. lib. 2. fo. 85. Heref. p. 8. E. 1. Ro. 80. de Banco. Mirror cap. 2. ſect. 18. Britton 151. b.

(b) Regiſtr. fo. 227. Bracton lib. 2. fo. 69. Britton fol. 165. Fleta lib. 1. ca. 14.

Britton. fo. 165. b. Regiſt. ubi ſupra.

Vid. Bracton, Britton & Fleta ubi ſupra. Regiſt. ubi ſupra. Bracton and Fleta ubi ſupra have (ad exhæredationem.)

(c) 10 H. 6. 7. 22 H. 6. 15. Pl. Com. 28. b. 22 E. 4. 16. 2 H. 4. 13. 20 E 3. br. 277.

(d) Lib. 5. fo. 96, 97. Britt. fol. 28 H. 8. Dyer. Pl. Com. 287, 288.

(e) Bract. lib. 2. ca. 39. fo. 92. b. Br. ca. 39. fo. 99. b. Fleta lib. 6. ca. 1, 2. & lib. 3. cap. 2. 20 H. 6. 35, 36. 19 H. 6. 17. 22. 74. 22 E. 4. 16. b. 4 E. 6. Pl. Com. 26.

(f) Vid. ſect. 413.

(g) 7 E. 3. 25. Vid. ſect. 686. 25 E. 3. 35. Bract. lib. 2. fo. 62. b. Vid. ſect. 413.

(h) Pl. Com. 242. Seigniot Berkleyes caſe.

(i) Vid. Britt. fo. 86. 121. & 130. 17 E. 3. 25. b. 33 H. 6. 22. 10 H. 7. 13, 14. 9 H. 7. 11. 16 H. 7. 9. 15 E. 4. 13, 14 H. 6. 12. 35 H. 6. 54. 24 Aſſ. 14. 40 Aſſ. 21. Tr. 5 E. 3. Rot. 4. in Scaccario. 3 E. 3. 32. 7 E. 3. 40. 11 H. 4. 84. 12 H. 4. 12. 18 E. 2. Conuſans 39. b. 5 E. 4. 121. 38 E. 3. 4. Lib. 9. fo. 28. in Caſe de Abb. de Strata Marcella.

him

him and his ſucceſſors for a hundred years, and after took a releaſe from the Leſſor to him and his ſucceſſors, and it was adjudged that by the releaſe he had but an eſtate for life, for he had the Leaſe in his natural capacity for it could not go in ſucceſſion, and (his ſucceſſors) gave him no eſtate of inheritance for want of theſe words (his heirs.) (l) If the King by his Letters Patents giveth lands Decano & Capitulo, habendum ſibi & hæredibus & ſucceſſoribus ſuis, In this caſe albeit they be perſons in their natural capacity to them and their heirs, yet becauſe the Grant is made to them in their politique capacity, it ſhall enure to them and their ſucceſſors. And ſo if the King do grant lands to I. S. Habendum ſibi & ſucceſſoribus ſive hæredibus ſuis, this Grant ſhall enure to him and his heirs.

(k) Hill. 21 Eliz. Dyers Manuſcript, inter Anſley and Johnſon in Com. Banco.
(l) 18 H.6.11. b. &c. adjudge.

(m) If. having divers ſons and daughters, A. giveth lands to B. & liberis ſuis, & alour heires, the father and all his children do take a Fee ſimple jointly by force of theſe words (their heirs) but if he had no child at the time of the feoffment the child born afterward ſhall not take.

(m) 15 E.3. tit. Counterples, de Voucher 43. 37 H.6.30. 11. E.4. 2.

Theſe words (his heirs) do not only extend to his immediate heirs, but to his heirs remote) and moſt remote, born and to be born (n) Sub quibus vocabulis (hæredibus ſuis) omnes hæredes propinqui comprehenduntur, & remoti, nati & naſcituri. And hæredum appellatione veniunt hæreles hæredum in infinitum. And the reaſon wherefore the Law is ſo preciſe to preſcribe certain words to create an eſtate of inheritance, is for avoiding of uncertainty, the mother of contention and confuſion.

(n) Fleta lib. 3. cap. 8. Pl. Com. 163.

There be many words ſo appropriated, as that they cannot be legally expreſſed by any other word or by any periphraſis, or circumlocution: Some to eſtates of lands, &c. as here and in (a) other places of our Author. In this place theſe words tantſolement, not ſolement alone, but tantſolement all only i. ſolummodo, or duntaxat are to be obſerved; (b) Some to Tenures (c) Some to perſons; (d) Some to offences; (e) Some to forms of original writs either for recovery of right, or removing, or redreſs of wrong. (f) Some to warranty of land. Theſe have I touched for examples. I leave others to the ſtudious Reader to obſerve and add, holding this for an undoubted verity, that there is no knowledg, caſe, or point in Law, ſeem it of never ſo little account, but will ſtand our Student in ſtead at one time or other, and therefore in reading nothing to be pretermitted.

(a) Sect. 17. 62. 133.
(b) Sect. 156. 161.
(c) Sect. 184.
(d) Sect. 190. 194. 746.
(e) Sect. 9. 67. 194. 204. 234. 236. 241. 405. 483. 478. 631. 655. 646. 620. 614. 637. 674. 692.
(f) Sect. 733.

¶ *Font leſtate.* Status dicitur à ſtando, becauſe it is fixed and permanent. The Iſle of Man, which is no part of the Kingdom, but a diſtinct Territory of it ſelf, hath been granted by the great Seal to divers ſubjects and their heirs. (g) It was reſolved by the Lord Chancellor, the two chief Juſtices, and chief Baron, that the ſame is an eſtate deſcendible according to the courſe of the Common Law, for whatſoever ſtate of inheritance paſs under the great Seal of England, it ſhall be deſcendible according to the rules, and courſe of the Common Law of England.

(g) Tr. 40. Eliz. in le Counte de Derbyes caſe, by the Lord Chancellor, les 2. chief juſtices, and Chief Baron.

¶ *En touts feoffments & grants.* Here he giveth the Feoffment the firſt place, as the ancient and moſt neceſſary conveyance, both for that it is ſolemn and publick, and therefore beſt remembred and proved, (g) and alſo for that it cleareth all diſſeiſins, abatements, intruſions, and other wrongful or defeaſible eſtates, where the entry of the Feoffor is lawful, which neither Fine, Recovery, nor Bargain and ſale by Deed indented and inrolled doth. And here is implyed a diviſion of Fee, or Inheritance, viz. (h) into corporeal (as Lands and Tenements which lye in Livery) comprehended in this word Feoffment, and may paſs by Livery by Deed, or without Deed, which of ſome is called Hæreditas corporata, and incorporeal, (which lye in Grant, and cannot paſs by Livery but by Deed, (as Advowſons, Commons, &c. and of ſome is called Hæreditas incorporata) and by the delivery of the Deed, the Freehold, and Inheritance of ſuch Inheritance, as doth lye in Grant, doth paſs) comprehended in this word Grant. And the Deed of incorporate inheritances doth equal the Livery of corporeate. And therefore Littleton ſaith, in all Feoffments and Grants, Hæreditas alia corporalis, alia incorporalis: Corporalis eſt, quæ tangi poteſt & videri; incorporalis, quæ tangi non poteſt, nec videri.

(g) Vide ſect. 59. & 66.

(h) Mirrour c. 2. ſect. 15. & cap. 5. ſect. 1. Bracton lib. 2. fol. 53. 366. 368. Fleta, lib. 3. cap. 1. 2. 15. Britton 84. 87. a & fol. 63. 101, 102, 141, 142, agreeth herewith. Pl. Com. 171. Hill & Grange.

Mirrour cap. 3. ſect. 2. Britton, cap. 34.

Feoffment is derived of the word of Art Feodum, quia eſt donatio feodi, for the ancient Writers of the Law called a feoffment donatio, of the verb do or dedi, which is the aptеſt word of feoffment. And that word Ephron uſed * when he enfeoffed Abraham, ſaying, I give thee the field of Machpelah over againſt Mamre, and the Cave therein I give thee, and all the trees in the field and the borders round about, all which were made ſure unto Abraham for a poſſeſſion, in the preſence of many witneſſes.

For the Antiquity of feoffment, ſee the ſecond Part of the Inſtitutes, Marlebridge c. 9. 8 E.3. 24. 18 H.6. 24. 39 H.6. 39.
* Geneſis 23.

By a feoffment the corporeate fee is conveyed, and it properly betokeneth a conveyance in fee as our Author himſelf hereafter ſaith, * in his Chapter of Tenant for life. And yet ſometime improperly it is called a feoffment when an eſtate of freehold only doth paſs. Done eſt notre generall plus que neſt feoffment, car done eſt generall a tous choſes moebles & nient moebles, feoffment eſt riens forſque del ſoyle. And note there is a difference inter cartam & factum, for

* Vide Sect. 57.
Britton, cap. 34. 44 E.3. 41.
See more of feoffments, ſect. 60. See of factum, ſect. 359.

carta is intended a Charter which doth touch inheritance, and ſo is not factum unleſs it hath ſome other addition.

Lib. 9. f. 63. in Lincoln College caſe.

Grant Conceſſio, is properly of things incorporeal, which (as hath been ſaid) cannot paſs without deed. And here it is to be obſerved (that I may ſpeak once for all) that every period of our Author in all his three Books contains matter of excellent learning, neceſſarily to be collected by implication, or conſequence, for example, he ſaith here, that theſe words (his heirs) make an eſtate of inheritance in all feoffments and grants, he expreſſing feoffments & grants, neceſſarily implyeth, that this rule extendeth not, firſt, to laſt Wills and Teſtaments for thereby (i) as he himſelf after ſaith, an eſtate of inheritance may paſs without theſe words (his heirs.) (k) As if a man deviſe 20 acres to another, and that he ſhall pay to his Executors, for the ſame ten pound, hereby the Deviſee hath a Fee ſimple by the intent of the Deviſor, albeit it be not to the value of the land. (l) So it is if a man deviſe lands to a man in perpetuum, or to give and to ſell, or in feodo ſimplici, or to him, and to his aſſigns for ever. In theſe caſes a Fee ſimple doth paſs by the intent of the Deviſor, but if the deviſe be to a man and his aſſigns without ſaying (for ever) the Deviſee hath but an eſtate for life. (m) If a man deviſe land to one & Sanguini ſuo, that is a Fee ſimple, but if it be Semini ſuo, it is an eſtate tail.

(i) Litt. lib. 3. c. de Attorn. ſect. 583. 6.
4 E. 6. Eſtates Br. 78.
29 H. 8. Teſtaments 18.
22 Eliz. Dier 371.
Temps H. 8. tit. Conſcience Br. 25.
(k) 21 E. 3. 16. 34 H. 6, 7. 19 H. 8. 9. lib. 3. fo. 21. in Borastons caſe lib. 6. f. 16, 17. lib. 10. fo. 67.
(l) Vide ſect. 585.
(m) Mich. 40. & 41 Eliz. in Error. Int. Downhal & Catesby adjudge. Brook tit. tail 21.

(n) Secondly, that it extendeth not to a Fine ſur conuſans de droit come ceo que il ad deſon done, by which a Fee alſo may paſs without this word (heirs) in reſpect of the height of that fine and that thereby is implyed that there was a precedent gift in fee.

(n) Lib. 1. fo. 100. Shelleyes caſe 42 E. 3. 7. 19 H. 6. 17. b. 22. b. Pl. Com. 248.

Thirdly, nor to certain Releaſes, and that three manner of ways, (o) firſt when an eſtate of inheritance paſſeth and continueth as if there be three coparceners or Joyntenants, and one of them releaſe to the other two, or to one of them generally without this word (heirs) by Littletons own opinion they have a Fee ſimple as appeareth hereafter. 2. By releaſe (p) when an eſtate of inheritance paſſeth and continueth not, but is extinguiſhed, as where the Lord releaſes to the Tenant, or the Grantee of a rent, &c. releaſe to the Tenant of the land generally all his right, &c. hereby the Seigniory, rent, &c. are extinguiſhed for ever without theſe words (his heirs.) 3. (q) When a bare right is releaſed, as when the Diſſeiſee releaſe to the Diſſeiſor all his right, he need not (ſaith our Author in another place) ſpeak of his heirs. But of all theſe, and the like caſes, more ſhall be treated in their proper places. 4. Nor to a Recovery, A. ſeiſed of land ſuffereth B. to recover the land againſt him by a common recovery where the judgment is quod prædictus B. recuperet verſus prædict' A. Tenementa prædicta cum pertinen, yet B. recovereth a Fee ſimple without theſe words (heirs) for regularly every Recoveror recovereth a Fee ſimple. 5. Nor to a creation of Nobility by Writ, for when a man is called to the Upper houſe of Parliament by Writ he is a Baron and hath inheritance therein without the word (heirs) yet may the King limit the general ſtate of inheritance created by the Law, and Cuſtom of the Realm to the heirs male, or general, of his body by the Writ, as he did to Bromflete who in 27 H. 6. was called to Parliament by the name of the Lo: Veſcye, &c. with the limitation in the Writ to him and the heirs males of his body, but if he be created by Patent, he muſt of neceſſity have theſe words (his heirs) or the heirs males of his body, or the heirs of his body &c. otherwiſe he hath no inheritance. The firſt creation of a Baron by patent that I find was of John Beuchampe of Holt, created Baron by patent in 11 R. 2. for Barons before that time were called by Writ. And it is to be obſerved that of ancient times Earls, &c. were created by girding them with a ſword, and nominating him Earl, &c. of ſuch a County or place, and this with a calling of him to Parliament by Writ by that name was a ſufficient creation of inheritance.

(o) Litt. lib. 2. ca. Tenant in common. ſect. 304, 305. cap. Attorn. ſect. 374. Dier 9 Eliz. 263.
(p) Litt. lib. 3. c. Releaſes ſect. 479, 480. 20 H. 6. 17. 19 H. 6. 17. 22.
(q) Litt. cap. Releaſes. ſect. 467.

27 H. 6. Lo. Veſcies caſe.

But out of this rule of our Author, the Law doth make divers exceptions (Et exceptio probat regulam) for ſometime by a Feoffment a Fee ſimple ſhall paſs without theſe words (his heirs) For example, firſt (r) if the father enfeoff the ſon, To have and hold to him and to his heirs, & the ſon enfeoffeth the father as fully as the father enfeoffed him, by this the father hath a fee ſimple, quia verba relata hoc maximè operantur per referentiam ut in eſſe videntur. (s) Secondly, in reſpect of the conſideration, a fee ſimple had paſſed at the Common Law without this word (heirs) & at this day an eſtate of inheritance in tail, as if a man had given land to a man with his daughter in frankmarriage generally, a fee ſimple had paſſed without this word (heirs) for there is no conſideration ſo much reſpected in law, as the conſideration of marriage in reſpect of aliance and poſterity. (t) Thirdly, if a Feoffment or Grant be made by Deed to a Major and Communalty or any other Corporation aggregate of many perſons capable, they have a fee ſimple without the word (Succeſſors) becauſe in judgment of the Law they never dye. (u) Fourthly, in caſe of a ſole Corporation a fee ſimple ſhall ſometime paſs without this word (Succeſſors) as if a feoffment in fee be made of land to a Biſhop. To have and to hold to him in libera eleemoſyna, a fee ſimple doth paſs without this word (Succeſſors.) (w) And ſo if a man give lands to the King by deed inrolled, a fee ſimple doth paſs without theſe words (Succeſſors or heirs) becauſe in judgment of law the King never dieth. Fifthly, in Grants ſometimes an Inheritance ſhall paſs without this word (heirs) (x) as if partition be made between Coparceners of lands in fee ſimple, and for owelty of partition the one grant a rent to

(r) 39 Aſſ. 12. 41 E. 3. tit. Feoffments & Faits 254. 14 H. 4. 13. 34 E. 3. Avowry 258.
(s) Vide ſect. 17. 12 H. 4. 19. in Formedon.

(t) 8 E. 3. 27. 11 H. 7. 12. 22 E. 4. 11 H. 4. 84. 2 H. 4. 13.
(u) 19 H. 6. 74. 20 H. 6. 36.
(w) Pl. Com. Lo. Berkleyes caſe.

(x) 29 Aſſ. 23. 15 H. 7. 14. 2 H. 7. 5. 11. H. 4. 3. 21 E. 3. 1. 21 Aſſ.

the

the other generally, the Grantee ſhall have a Fee ſimple without this word (heirs) becauſe the Grantor hath a Fee ſimple, in conſideration whereof, he granted the rent. Ipſæ enim leges cupiunt ut jure regantur. Sixthly, by the Foreſt Law, if an Aſſart be granted by the King at a Juſtice ſeat (which may be done without Charter) to another. Habendum & tenendum ſibi in perpetuum, he hath a Fee ſimple without this word (heirs) (y) for there is a ſpecial Law of the Foreſt, as there is a Law Marſhal for wars, and a Marine Law for the ſeas. (z) And this rule of our Author extendeth to the paſſing of eſtates of inheritances in exchanges, releaſes, or confirmations that enure by way of enlargement of eſtates, warranties, bargaine and ſales by Deed indented and inrolled, and the like, in which this word (heirs) is alſo neceſſary, for they do tant-amount to a feoffment or grant, or ſtand upon the ſame reaſon that a feoffment or grant doth: for like reaſon doth make like Law. Ubi eadem ratio, ibi idem jus. And this is to be obſerved thorowout all theſe three Books, that where other caſes fall within the ſame reaſon, our Author doth put his caſe but for example: for ſo our Author himſelf in another place * explaineth it, ſaying, Et memorandum que en touts autres caſes coment que ne ſoient icy expreſſment moves & ſpecifies, ſi ſont en ſemblable reaſon ſont en emblable ley. And here our Author is to be underſtood to ſpeak of heirs when they are inheritable by deſcent, for they are capable of land alſo by purchaſe, and then the courſe of deſcent is ſometime altered, as if lands of the nature of Gravelkind be given to B. and his heirs having iſſue divers ſons, all his ſons after his deceaſe ſhall inherit; but if a leaſe for life be made, the remainder to the right heirs of B. and B. dieth, his eldeſt ſon only ſhall inherit, for he only to take by purchaſe is right heir by the Common Law. So note a diverſity between a purchaſe and deſcent, but where the remainder is limited to the right Heirs of B. it need not be ſaid, and to their Heirs for being plurally limited, it includeth a Fee ſimple, and yet it reſteth but in one by purchaſe.

(y) 42 H.7.2.
(z) 22 E.3.3.45. E.3.26. 9 E.3.21. Lib. 4. fo.121. Buſtards caſe. Vide Sect.465 469.619. 19 H.6.17.22. 17 E.2.Gar.85.
(*) Sect. 301.

Out of that which hath been ſaid, it is to be obſerved, that a man may purchaſe lands to him and his heirs by ten manner of conveyances, (for I ſpeak not here of Eſtoppels.) Firſt, by Feoffment: Secondly, by Grant (of which two our Author here ſpeaketh.) Thirdly, by Fine, which is a Feoffment of record. Fourthly, by common Recovery, which is common conveyance, and is in nature of a feoffment of record. Fifthly, by Exchange, which is in nature of a Grant. Sixthly, by Releaſe to a particular Tenant. Seventhly, by Confirmation to a particular Tenant, both which are in nature of Grants. Eighthly, by Grant of a reverſion or remainder, with attornment of the particular Tenant, of all which our Author ſpeaketh hereafter. Ninthly, by bargain and ſale, by Deed indented and inrolled, ordained by Statute ſince Littleton wrote. Tenthly, by Deviſe, by Cuſtom of ſome particular place, as he ſheweth hereafter; and ſince he wrote, by Will in writing, generally by authority of Parliament.

27 H.8. cap. 16.
32 H.8.cap.1.
34 H.8.cap.5.
Sect. 331.
37 Aſſ.p.8.38. Aſſ. p.9. 12 E.4.9. &c.

What words are apt words for a feoffment or Grant, vide Sect. 531. Our Author ſpeaketh of Feoffments, and Grants, whereby is implyed lawful conveyances; and therefore this rule extendeth not to Diſſeiſins, Abatements, or Intruſions into lands or tenements, or to uſurpations to Advowſons, &c. in which caſes eſtates in Fee ſimple are gained by the act & wrong of the Diſſeiſors, Abators, Intruders, and Uſurpers; and if a diſſeiſin, abatement, or intruſion be made to the uſe of another, il cey que uſe agreeth thereunto in pays, by this bare agreement he gaineth a Fee ſimple without any livery of ſeiſin, or other ceremony.

Sect. 2.

¶ ET ſi home purchaſe terres en Fee ſimple & deuy ſans iſſue cheſcun que eſt ſon prochein coſin collateral del entire ſanke, de quel pluis long degree que il ſoit, poit inheriter & aver ẽ la tre come heire a luy.

And if a man purchaſe land in fee ſimple and dye without iſſue, he which is his next coſin collateral of the whole bloud, how farre ſo ever he be from him in degree, may inherit and have the land as heir to him.

¶ Littleton ſheweth here, who ſhall be Heir to lands in Fee ſimple, for he intendeth not this caſe of an eſtate taile, for that he ſpeaketh of an Heir of the whole bloud, for that extendeth not to eſtates in taile, as ſhall be ſaid hereafter in this Chapter, Sect. 6.

¶ *Prochein coſin collaterall.* Neither excludeth he brethren or ſiſters, becauſe he hath a ſpecial caſe concerning them in this Chapter, Sect. 5. and in his Chapter of Parceners: but this is intended

where a man purchaſeth lands, and dieth without iſſue, and having neither brother nor ſiſter, then his next coſin collateral ſhall inherit. So as here is implyed a diviſion of heirs, viz. lineal (who ever ſhall firſt inherit) and collateral, (who are to inherit for default of lineal.) For in deſcents it is a maxime in Law, Quod linea recta ſemper præfertur tranſverſali. Lineal deſcent is conveyed downward in a right line, as from the grandfather to the father, from the father to the ſon, &c. Collateral deſcent is derived from the ſide of the lineal; as grandfathers brother, fathers brother, &c. Prochein couſin collateral enheritera, doth give a certain direction to the next coſin to the ſon, and therefore the fathers brother and his poſterity ſhall inherit before the grandfathers brother and his poſterity. Et ſic de cæteris, for propinquior excludit propinquum, & propinquus remotum, & remotus remotiorem.

Glanvil, lib.7. cap.3,4. Bract. lib.2. cap. 30. fol.65. Britton, cap. 119. Fleta, lib.6, cap.1. & 2. Bract. lib.2. cap. 30. fol.64. Fleta, lib. 5. cap. 5. & lib.6. cap. 1.& 2. Britton, cap. 119. Mirrour.11. cap.1. ſect. 3. 30 Aſſ. p.47.

Upon this word (Procheir,) I put this caſe. One hath iſſue two ſons A. and B. and dieth, B. hath two ſons C. and D. and dieth C. the eldeſt ſon hath iſſue and dieth: A purchaſeth lands in Fee ſimple and dieth without iſſue, D. is his next coſin, and yet ſhall not inherit but the iſſue of C. for he that is inheritable, is accounted in Law next of bloud: And therefore here is underſtood a diviſion of next, viz. next, jure repræſentationis, and next, jure propinquitatis, that is, by right of repreſentation, and by right of propinquity. And Littleton meaneth of the right of repreſentation, for legally in courſe of deſcents he is next of bloud inheritable. And the iſſue of C. doth repreſent the perſon of C. and if C. had lived, he had been legally next of bloud. And whenſoever the father, if he had lived, ſhould have inherited, his lineal heir by right of repreſentation, ſhall inherit before any other, though another be jure propinquitatis nearer of bloud. And therefore Littleton intendeth his caſe of next coſin of bloud, immediately inheritable. So as this produceth another diviſion of next of bloud, viz. immediately inheritable, as the iſſue of C. and mediately inheritable as D. if the iſſue of C. die without iſſue, for the iſſue of C. and all that live, be they never ſo remote, ſhall inherit before D. or his line, and therefore Littleton ſaith well, De quel pluis long degree, que il ſoit. And here ariſeth a diverſity in Law between next of bloud inheritable by deſcent, and next of bloud capable by purchaſe. And therefore in the caſe before mentioned, if a Leaſe for life were made to D. the remainder to his next of bloud in fee. In this caſe, as hath been ſaid, D. ſhall take the remainder, becauſe he is next of bloud and capable by purchaſe, though he be not legally next to take as heir by deſcent.

19 R.2. tit. gar.100.

30 Aſſ. p. 47.

Sect. 3.

¶ *Uncore le pere eſt plus prochein de ſanke.* And therefore ſome do hold upon theſe words of Littleton, That if a Leaſe for life were made to the ſon, the remainder to his next of bloud, that the father ſhould take the remainder by purchaſe, and not the uncle; for that Littleton ſaith, the father is next of bloud, and yet the uncle is heir. As if a man hath iſſue two ſons, and the eldeſt ſon hath iſſue a ſon and dye, a remainder is limited to the next of his bloud, the younger ſon ſhall take it, yet the other is his heir.

5 E. 6. tit. Adminiſtr. Br. 47. Ratcliffs caſe, ubi ſupra. See after in the Chapter of Socage.

¶ (p) *Eſt un Maxime en le Ley que enheritance poet lineallment diſcender mes nemy aſcender.*

(p) Pl. Com.293. b. Osborns caſe.

Maxime, i. A ſure foundation or ground of Art, and a

¶ Mes ſi ſoit pere & fits, & le pere ad un frere que eſt uncle a le fits, & le fits purchaſe tre en Fee ſimple, & mor ſans iſſue vivāt ſon pere, luncle avera la tre come heire al fits & nemy le pere, uncore le pere eſt pluis prochein de ſanke, pur ceo que eſt un maxime en le ley, Que inheritāce poet lineallment diſcender, mes nemy aſcender. Uncor ſi le fits & tiel caſe mor ſans iſſue, & ſon uncle entra en la tre come heire a le

But if there be father & ſon, and the father hath a brother that is uncle to the ſon; and the ſon purchaſe land in fee ſimple, and dye without iſſue, living his father; the uncle ſhall have the land as heir to the ſon, and not the father; yet the father is nearer of bloud: becauſe it is a maxime in Law, That inheritance may lineally deſcend, but not aſcend. Yet if the ſon in this caſe dye without iſſue, and his uncle enter into the Land as heir to the

fits

fits (ſicome il devoit p la ley) & apres l'uncle devia ſans iſſue; vivant le pere donqs le pere, avera la terre com heire al uncle, & nemy cõe heire a ſon fits, pur ceo que il veigne al terre p collateral diſcent & nemy p lineall aſcention.

ſon (as by Law he ought) and after the uncle dieth without iſſue, living the father, the father ſhall have the land as heir to the uncle, and not as heir to his ſon, for that he commeth to the land by collaterall diſcent & not by lineal aſcent.

concluſion of reaſon ſo called, (q) quia maxima eſt ejus dignitas & certiſſima authoritas, atque quod maximè omnibus probetur, ſo ſure and uncontrollable, as that they ought not to be queſtioned. (r) And that which our Author here and in other places calleth a Maxime, hereafter he calleth a Principle, and it is all one with a Rule, a common ground, Poſtulatum, or an Axiome, and it were too much curioſity to make nice diſtinctions betweem them. And it is well ſaid in our Books, (ſ) neſt my a diſputer lancient principles del ley. I never read any opinion in any book old or new againſt this maxime, but only in lib. rub. where it is ſaid, (t) ſi quis ſine liberis diſceſſerit, pater aut mater ejus in hæreditatem ſuccedat, vel frater & ſoror ſi pater & mater deſit; ſi nec hos habeat, ſoror patris vel matris & deinceps qui propinquiores in parentela fuerint, hæreditariò ſuccedant, & dum virilis ſexus exſtiterit, & hæreditas ab inde ſit, fœmina non hæreditat. But all our ancient Authors, and the conſtant opinion ever ſince, do affirm the maxime.

(q) Pl. Com. 27. b.

(r) Sect. 90. 648.

(ſ) 12 H. 4. Glanvil. lib. 7. cap. 1. Bract. lib. 2. cap. 29.

(t) Lib. Rub. cap. 70.

By this maxime, in the concluſion of his caſe, only lineal aſcention in the right line is prohibited, and not in the collateral, (u) Quælibet hæreditas naturaliter quidem ac hæredes hæreditabiliter deſcendit, nunquam quidem naturaliter aſcendit; deſcendit itaque jus quaſi ponderoſum quod cadens deorſum recta linea vel tranſverſali, & nunquam reaſcendit ea via qua deſcendit poſt mortem anteceſſorum, à latere tamen aſcendit alicui præter defectum hæredum inferiùs provenientium; ſo as the lineal aſcent is prohibited by Law, and not the collateral. And in prohibiting the lineal aſcent, the Common Law is aſſiſted with the Law of the twelve tables.

(u) Britt. cap. 119. Fleta lib. 6. cap. 1. Num. 6. cap. 27. Ratcliff. caſe ubi ſupra.

Here our Author, for the confirmation of his opinion, draweth a reaſon and a proof (as you have perceived) from one of the Maxims of the Common Law: Now that I may here obſerve it once for all, his proofs and arguments, in theſe his three books, may be generally divided into two parts, viz. from the Common Law and from Statutes: of both which, and of their ſeveral branches, I ſhall give the ſtudious Reader ſome few examples, and leave the reſt to his diligent obſervation.

For the Common Law, his proofs and arguments are drawn from twenty ſeveral fountains or places.

(a) Firſt, from the Maximes, Principles, Rules, Intendment, and Reaſon of the Common Law, which indeed is the rule of the Law as here, and in other places our Author doth uſe.

(b) Secondly, from the books, records, and other authorities of Law cited by him, Ab authoritate, & pronunciatis.

(c) Thirdly, from original Writs in the Regiſter, à re ſcripta valet argumentum.

(d) Fourthly, from the forme of good pleading.

(e) Fifthly, from the right entry of Judgments.

(f) Sixthly, à præcedentibus approbatis & uſu, from approved Precedents and Uſe.

(g) Seventhly, à non uſu, from not uſe.

(h) Eighthly, ab artificialibus argumentis, conſequentibus, & concluſionibus, artificial arguments, conſequents, and concluſions.

Ninthly, (i) à communi opinione juriſprudentium, from the common opinion of the Sages of the Law.

Tenthly, (k) ab inconvenienti, from that which is inconvenient.

Eleventhly, (l) a diviſione, from a diviſion, vel ab enumeratione partium, from the enumeration of the parts.

Twelfthly, (m) à majore ad minus, from the greater to the leſſer, or (n) from the leſſer to the greater, (o) à ſimili, (p) à pari.

13. (p) Ab impoſſibili, from that which is impoſſible.

14. (q) A fine, from the end.

15. (*) Ab utili vel inutili, from that which is profitable or unprofitable.

16. (r) Ex abſurdo, for that thereupon ſhall follow an abſurdity, quaſi à ſurdo prolatum, becauſe it is repugnant to underſtanding and reaſon.

17. (ſ) A natura & ordine naturæ, from nature, or the courſe of nature.

18. (t) Ab

(a) Sect. 5 8. 90. 96. 32. 53. 57. 59. 65. 99. 130. 146. 156. 169. 178. 231. 293. 302. 352. 360. 376. 377. 396. 410. 440. 441. 346, 347. 462. 431.

(b) Sect. 20. where a number of other are quoted.

(c) Sect. 67. 132. 170. 234. 241. 263. 613, 614.

(d) Sect. 58. 170. 183. 369.

(e) Sect. 248. 249.

(f) Sect. 88. 74. 76. 145. 332. 371, 372. 445.

(g) Sect. 108. 733.

(h) Sect. 170. 264. 283. 302. 429. 464. 629. 633. 686. 343. 418. 613. 686. 739.

(i) Sect. 697. 59. 104. 288. 332. 478.

(k) Sect. 87. where many others are quoted.

(l) Sect. 13. where many more are quoted, but ſee chiefly. Sect. 381.

(m) Sect. 438, 439. 441.

(n) Sect. 18.

(o) 301, &c.

(p) 291. 298. 409, &c.

(p) 129. 440.

(q) Sect. 46. 194.

(*) Sect. 360.

(r) Sect. 702.

(ſ) Sect. 114. 223. 129. 211. 107. 108.

18. (t) Ab ordine religionis, from the order of Religion.
19. (u) A communi præſumptione, from a common preſumption.
20. (w) A lectionibus juriſprudentium, from the readings of learned men of Law.

From Statutes, his arguments and proofs are drawn.

1. (x) From there hearſal or preamble of the Statute.
2. By the body of the Law diverſly interpreted.

Sometime by other parts of the ſame Statute, which is benedicta expoſitio, & ex viſceribus cauſæ.

(y) Sometime by the reaſon of the Common Law. But ever the general words are to be intended of the lawful Act; (z) and ſuch interpretation muſt ever be made of all Statutes, that the innocent, or he in whom there is no default, may not be damnified.

¶ *En la ley.* There be Divers Laws within the Realm of England. As firſt. (a) Lex Coronæ, the Law of the Crown.

2. (b) Lex & conſuetudo Parliamenti. Iſta lex eſt ab omnibus quærenda, à multis ignorata, à paucis cognita.

3. (c) Lex naturæ, the Law of nature.

4. (d) Communis Lex Angliæ, the Common Law of England, ſometime called Lex terræ, intended by our Author in this and the like places.

5. (e) Statute Law, Laws eſtabliſhed by Authority of Parliament.

6. (f) Conſuetudines, Cuſtoms reaſonable.

7. (g) Jus Belli, The Law of Arms, War, and Chivalry, In republica maximè conſervanda ſunt jura belli.

8. (h) Eccleſiaſtical or Canon Law in Courts in certain Caſes.

9. (i) Civil Law in certain Caſes, not only in Courts Eccleſiaſtical, but in the Courts of the Conſtable and Marſhal, and of the Admiralty, in which Court of the Admiralty is obſerved, la ley Olyron, anno 5. of Richard the firſt, ſo called, becauſe it was publiſhed in the Iſle of Olyron.

10. (k) Lex foreſtæ, Foreſt Law.

11. (l) The Law of Marque, or reprisal.

12. (m) Lex mercatoria, Merchant, &c.

13. (n) The Laws and Cuſtoms of the Iſles of Jerſey, Garneſey, and Man.

14. (o) The Law and privilege of the Stannaries.

15. (p) The Laws of the Eaſt, Weſt, and middle Marches, which are now abrogated.

But hereof this little taſte for our Student, that he may be capable of that which he ſhall read concerning theſe and others, in Records, and in our Books, and orderly obſerve them, ſhall ſuffice.

¶ *Et ſon uncle enter en la terre.* For if the Uncle in this caſe doth not enter into the land, then cannot the Father inherit the land, for there is another maxim in Law herein implyed. (q) That a man that claimeth as heir in Fee ſimple to any man by deſcent, muſt make himſelf heir to him that was laſt ſeiſed of the actual Freehold and inheritance. And if the Uncle in this caſe doth not enter, then had he but a freehold in Law, and no actual freehold, but the laſt that was ſeiſed of the actual freehold, was the ſon, to whom the father cannot make himſelf heir; and therefore Littleton ſaith, Et ſon uncle enter en la terre (ſi come devoit per la ley) to make the father to inherit as heir to the uncle. (r) Note, that true it is, that the uncle in this caſe is heir, but not abſolutely heir; for if after the deſcent to him, the father hath iſſue a ſon or daughter, that iſſue ſhall enter upon the Uncle. (ſ) And ſo it is if a man hath iſſue a ſon and daughter, the ſon purchaſeth land in fee, and dieth without iſſue, the daughter ſhall inherit the land; but if the father hath afterward iſſue a ſon, this ſon ſhall enter into the land, as heir to his brother; and if he hath iſſue a daughter and no ſon, ſhe ſhall be coparcener with her ſiſter.

¶ *Si come il devoit per la ley.* Theſe words, as a key, do open the ſecrets of the Law, for hereupon it is concluded, that where the Uncle cannot get an actual poſſeſſion by entry or otherwiſe, there the father in this caſe cannot inherit. And therefore if an Advowſon be granted to the ſon and his heirs, and the ſon dye without iſſue, and this deſcend to the uncle, and he dye before he doth or can preſent to the Church, the father ſhall not inherit, becauſe he ſhould make himſelfe heir to the ſon, which he cannot do: And ſo of a rent, and the like. But if the uncle had preſented to the Church, or had ſeiſin of the rent, there the father ſhould have inherited. For Littleton putteth his caſe of an entry into land, but for an example. If the ſon make a leaſe for life, and die without iſſue, and the reverſion deſcend to the uncle, and he dye, the reverſion ſhall not deſcend to the father, becauſe in that caſe he muſt make himſelf heir to the ſon. If he infeoffe the ſons with warranty to him and his heirs, the ſon dies, the uncle enters into the land, and dies, the father, if he be impleaded, ſhall not take advantage of this warranty

(t) Sect. 202.
(u) Sect. 440.
(w) Sect. 481.

(x) Sect. 13, &c. Sect. 731. 692. 635. 633. 441. 103. 193. 154. 140. 2.

(y) Sect. 464.
(z) Sect. 731. 685.

(a) 17 E. 3. Rot. parl. nu. 19. 25 E. 3. cap. 1. Regiſt. inter Jura regia 6. I. &c.
(b) Commonly ſpoken of in Parliament Rols.
(c) 13 E. 4. 9. lib. 7. Calvins caſe Pl. Com. Sharingtons caſe
(d) This Law appeareth in our Books and judicial Records.
(e) Theſe are of Record in Rolls of Parliament.
(f) Whereof you ſhall read in our Authour, and in our Books.
(g) Rot. parl. 2 R. 2. nu. 3. 13 R. 2. cap. 2.
(h) Lib. 7. Cawdries caſe. articul. ſuper cartas, &c.
(i) 37 H. 6. 21. Forteſc. c. 32. 13 H. 4. 4. 28 H. 8. cap. 15.
(k) Carta de Foreſta, &c. the Eires of the Foreſts.
(l) 27 E. 3. cap. 17. Wi. ca. 23. 4 H. 5. cap. 7.
(m) Mirrour de Juſtic. cap. 1. Bract. 334. 444. Fleta lib. 2. cap. 51. 52, &c. 5 E. 3. 11. 38 E. 3. 7. 27 E. 3. cap. 8. Forteſc. 32. F. N. B. 117. 13 E. 4. 9. Rot. parl. 6 H. 4. nu. 43. 10 H. 7. 16. 47 E. 3. 22. 30 E. 1. Account. 127. Carta mercatoria 31 E. 1. Rot. patent.
(n) Mich. 41 E. 3. coram Rege in Theſaur. 12. fo. 7. 1 E. 2 12 H. 8. fol. 5. Rot. par. an. 20 E. 1. lib. 7. Calvins caſe. fol. 21. Regiſt. fol. 22.
(o) 50 E. 3. Rot. parl. 50 E. 3. Rot. patent, &c.
(p) 31 H. 6. cap. 3, 4. Jac. 1.
(q) 11 H. 4. 11. 10. Aſſ. 27. 34. Aſſ. p. 20. 19 E. 2. Quar. imped. 177. 45 E. 3. 23. 40. Aſſ. p. 6.
(r) 11. Aſſ. p. 6. Doct. & Stud. 12. b. 32 H. 6. 35.
(ſ) 19 H. 6. 61.

ranty, for then he muſt vouch A. as heir to his ſon, which he cannot do, for albeit the warranty deſcended to the uncle, yet the uncle leaveth it as he found it, and then the father by Littletons (devoit) cannot take advantage of it. For Littleton, Sect 603. ſaith, that warranties ſhall deſcend to him that is heir by the Common Law: and Sect. 7. 18. he ſaith, that every warranty by the Common Law, which proveth that the father ſhall not be bound by the warranty made by the ſon, for that the father cannot be heir to the ſon that made the warranty. And a warranty ſhall not go with tenements, whereunto it is annexed, to any ſpecial heir but always to the heir at the Common Law. And therefore if the uncle be ſeiſed of certain lands, and is diſſeiſed, the ſon releaſe to the diſſeiſor with warranty, and die without iſſue, this ſhall bind the uncle, but if the uncle die without iſſue, the father may enter, for the warranty cannot deſcend upon him. So if the ſon concludeth himſelf by pleading concerning the tenure and ſervices of certain lands, this ſhall bind the uncle; but if the uncle dis without iſſue; this ſhall not bind the father, becauſe he cannot be heir to the ſon, and conſequently not to the Eſtoppel in that caſe: but if it be ſuch an Eſtoppel as runneth with the land, then it is otherwiſe.

Vide ſect. 603. 7.18.

Vide ſect. 735. 736, 737.

35 H. 6. 33. John Crooks caſe.

Sect. 4.

¶ EN tiel caſe, lou le fits purchaſe terre en Fee ſimple, & debie ſauns iſſue, ceux de ſon ſanke de part ſon pere enheriteront cõe heires a luy, devant aſcun de ſanke de pt la mere: mes ſil nad aſcun heire de part ſon pere, donques la tre diſcendera a les heires de part la mere. Mes ſi home pzent enheritrix des tres en Fee ſimple, qux ont iſſue fits, et debiont & le fits enter en les tenements, cõe fits & heire a ſa mere, & puis debie ſans iſſue, les heires de part la mere doyent enheriter les tenements & jammes les heires de part le pere. Et ſil ny ad aſcun heire de part la mere, donque le Seignioz de que la terre eſt tenus,

AND in caſe, where the ſon purchaſeth Land in Fee ſimple, and dyes without iſſue; they of his blood on the fathers ſide ſhall inherit as heirs to him, before any of the blood on the mothers ſide. But if he hath no heire on the part of his father, then the land ſhall deſcend to the heires on the part of the mother: but if a man marrieth an inheritrix of lands in Fee ſimple who have iſſue a ſon, and die, and the ſon enter into the tenements, as ſon and heir to his mother, and after dies without iſſue, the heirs of the part of his mother ought to inherit, and not the heires of the part of the father. And if he hath no heire on the part of the mother, then the Lord of whom the land is

¶ BY this it appeareth, that our Author diviideth heires into heires of the part of the father, and into heires of the part of the mother. (a) And note, it is an old and true Maxime in Law, that none ſhall inherit any lands as heir, but only the blood of the firſt Purchaſer, for * reſert à quo fiat perquiſitum. As for example, Robert Coke taketh the daughter of Knightley to wife, and purchaſeth lands to him and to his heires, and by Knightley hath iſſue Edward, none of the blood of the Knightleyes, though they be of the blood of Edward ſhall inherit, albeit he had no kindred but them, becauſe they were not of the blood of the firſt purchaſer, viz. of R. Coke.

Vide ſect. 354. an excellent point.

(a) Pl. Com. Sir Edward Cleres caſe 47.

* Fleta lib. 6. cap. 1. 2, &c. Bracton lib. 2. fo. 65. 67, 68, 69, &c, Britton ca. 119. 24 E. 3. 30. 39 E. 3. 29. 30. 38. 49 E. 3. 12. 49 Aſſ. p. 4. 12 E. 4. 14. Pl. Com. 445. & 450. 7 E. 6. Dier 6. 24 E. 3. 24. 37. Aſſ. 4. 40 E. 3. 9, 42 E. 3. 10. 45 E. Releaſes 28. 7 H. 5. 324. 8. Aſſ. 6. 45. Aſſ. 2. 5. E. 4. 7. 3 H. 7. 21. H. 7. 33. 40 Aſſ. 6. Ratcliffs caſe lib. 3. fol. 42.

¶ (b) *Ceux del ſanke de part ſon pere.* Here it is to be underſtood, that the father hath two inheritable bloods in him, viz. the blood of his father, and the blood of his mother, both theſe bloods are of the part of the father. (c) But this is the ancient Authors ſay, that if a man be ſeiſed of lands in the right of his wife, and is attainted of felony, and after hath iſſue, this iſſue ſhould not inherit his mother, for that he could derive no blood inheritable from the father. And both theſe bloods of the part of the father muſt be ſpent before

(b) Bracton, ubi ſupra. Fleta, ubi ſupra. Britton, cap. 118, 119. Pl. Com. 445. Cleres caſe. Tr. 19 E. 1. in Banco Rot. 25 Lincoln. Will. Scots caſe.

(c) Britton, fol. 15. Fleta, lib. 1. cap. 18. Pl. Com. 445, 446, &c. Cleres caſe.

before the heir of the blood of the part of the mother ſhall inherit, wherein ever the line of the male of the part of the father, (that is) the poſterity of ſuch male, be they male or female, (who ever in deſcents are preferred) muſt faile before the line of the mother ſhall inherit, (d) and the reaſon of all this is for that the blood of the part of the father is more worthy, and more near in judgment of the Law, than the blood of the part of the mother.

(d) 19 R.2. garr. 100.

¶ *Devant aſcun del ſanke del part del mere.* And it is to be obſerved, that the mother hath alſo two immediate bloods in her, (viz.) her fathers blood, and her mothers blood. Now to illuſtrate all this by example. Robert Fairefield, Son of John Fairefield, and Iane Sandie, take to wife Anne Boyes, Daughter of John Boyes, and Iane Bewpree, and hath Iſſue William Fairefield, who purchaſeth lands in fee. Here William Fairefield hath four immediate bloods in him, two of the part of the father, viz. the blood of the Fairefields, and the blood of the Sandies, and two of the part of his mother, viz. the blood of the Boyſes, and the blood of the Bewprees, and ſo in both caſes upward in infinitum. Now admit that William Fairefield die without iſſue, firſt the blood of the part of his father, viz. of the Fairefields, and for want thereof, the blood of the Sandies (for both theſe are of the part of the father) if both theſe fail, then the heires of the part of the mother of William Fairefield ſhall inherit, viz. firſt the blood of the Boyſes, and for default thereof the blood of the Bewprees.

Britton, cap. 118. 119. Fleta, lib. 6. cap. 2.

avera la terre per Eſcheat. En meſme le manner eſt, ſi tenements diſcendont a le fits de part le pere, & il enter & puis morust ſans iſſue, cel terre diſcendra as heires de part le pere & nemp as heires de part la mere. Et ſil ny ad aſcun heire de part le pere, donques le ſeignior, de que la terre eſt tenus, a vera la terre per Eſcheat. Et ſic vide diverſitatem, lou le fits purchaſe terres ou tenements, en Fee ſimple, & lou il veient eins a tiels terres ou tenements per diſcent de part ſa mere ou de part ſon pere.

holden, ſhall have the land by Eſcheat. In the ſame manner it is, if lands deſcend to the ſon of the part of the father, and he entreth, & afterwards dies without iſſue, this Land ſhall deſcend to the heirs on the part of the father, and not to the heirs on the part of the mother. And if there be no heir of the part of the father, the Lord of whom the Land is holden, ſhal have the land by Eſcheat. *And ſo ſee the diverſity*, where the ſon purchaſeth lands or tenements in Fee ſimple, and where he commeth to them by deſcent on the part of his mother, or on the part of the father.

It is neceſſary to be known in what caſes the heir of the part of his mother, ſhall inherit, and where not. If a man be ſeiſed of lands, as Heir of the part of his mother, and maketh a feoffment in fee, and taketh back an eſtate to him and to his heirs, this is a new purchaſe; and if he dieth without iſſue, the heires of the part of the father ſhall firſt inherit. If a man ſo ſeiſed, maketh a feoffment in fee upon condition, and die, the heir of the part of the father which is the heir at the common Law, ſhall enter for the condition broken, but the heir of the part of the mother ſhall enter upon him, and enjoy the land. (m) A man ſo ſeiſed maketh a feoffment in fee reſerving a rent to him and his heirs, this rent ſhall go to the heirs on the part of the father; but (n) if he had made a gift in tail, or a leaſe for life reſerving a rent, the heir of the part of the mother ſhall have the reverſion, and the rent alſo, as incident thereunto, ſhall paſs with it, but the heir of the part of the mother ſhall not take advantage of a condition annexed to the ſame, becauſe it is not incident to the reverſion, nor can paſs therewith. (o) If a man had bin ſeiſed of a mannor, as heir on the part of his mother, and before the Statute of Quia emptores terrarum, had made a feoffment in fee of parcel to hold of him by rent and ſervice, albeit they be newly created, yet for that they are parcel of the manor, they ſhall with the reſt of the mannor deſcend to the heir of the part of the mother, quia multa tranſeunt cum univerſitate quæ per ſe non tranſeunt. If a man hath a rent ſeck of the part of his mother, and the tenant of the land granteth

9 H.7. cap. 24.

(m) 7 H.6.4. Lib.1. fol.100. Shellyes caſe.

(n) 5. E.2. tit. avowry 207.

(o) 5 E.2. avowry 207.

granteth a diſtreſs to him and his heirs, and the Grantee dieth, the diſtreſs ſhall go with the Rent to the heir of the part of the Mother as incident or appurtenant to the Rent, for now is the Rent ſeek become a Rent charge.

(p) A man ſo ſeiſed as heir of the part of his Mother, maketh a feoffment in Fee to the uſe of him and his heirs, the uſe being a thing in truſt and confidence ſhall enſue the nature of the Land, and ſhall deſcend to the heir on the part of the Mother. (q) A man hath a Seigniory as heir of the part of his Mother, and the Tenancy doth eſcheat, it ſhall go to the heir of the part of the Mother. If the heir of the part of the Mother of Land whereunto a warranty is annexed is impleaded and Vouche, and judgment is given againſt him, and for him to recover in value, and dieth before execution, (r) the heir of the part of the Mother ſhall ſue execution to have in value againſt the Vouchee, for the effect ought to purſue the cauſe, and the recompence ſhall enſue the loſs.

(p) 5 E.4.4. lib.1. fol.100. Shelley's Caſe. 27 H. 8. Dyer, Buckenhams Caſe. 32 H.8. gard. Brook 93. 13 H. 6. 7.

(q) 16 E. 3. pag. 46.

(r) Pl. Com. 292, & 515. See more of this in the Chapter of Warranties.

If a man giveth Lands to a man, to have and to hold to him and his heirs on the part of his Mother, yet the heirs of the part of the Father ſhall inherit, for no man can inſtitute a new kind of inheritance not allowed by the Law, and the words (of the part of his Mother) are void, as in the caſe that Littleton putteth in this Chapter. If a man giveth Lands to a man to him and his heirs males, the Law rejecteth this word Males, becauſe there is no ſuch kind of inheritance, whereof you ſhall read more in his proper place.

If a man hath iſſue a Son, and dieth, and the wife dieth alſo, Lands are letten for life, the remainder to the heirs of the wife, the Son dieth without iſſue, the heirs of the part of the Father ſhall inherit, and not the heirs of the part of the Mother, becauſe it veſted in the Son as a Purchaſer. And the rule of Littleton holdeth as well in other kind of inheritances, as in Lands and Tenements. (t) And therefore if there be Lord, ſem meſne, and Tenant, and the Meſne bind her ſelf and her heirs by her Deed to the acquital of the Tenant, the Meſne take Huſband, the Tenant by his Deed granteth to the huſband and his heirs, that he or his heirs ſhall not be bound to acquital, the husband and wife have iſſue, and dye, this iſſue, being bound as heir to his Mother, ſhall not take benefit of the ſaid Grant of diſcharge, for that extends to the heirs of the part of the Father, and not to the heirs of the part of the Mother, and therefore the heir of the part of the Mother was bound to the acquital. And thus much for the better underſtanding of Littleton's Caſes concerning the heir of the part of the Mother ſhall ſuffice.

(t) 38 E. 3. 12.

¶ *Mes ſi home priſt feme inheritrix, &c.* Here is another Maxime, (v) That whenſoever Lands do deſcend from the part of the Mother, the heirs of the part of the Father ſhall never inherit. And likewiſe when Lands deſcend from the part of the Father, the heirs of the part of the Mother ſhall never inherit. Et ſic paterna paternis, & è converſo materna maternis. For more manifeſtation hereof, and of that which which hereafter ſhall be ſaid touching Deſcents, ſee a Table in the end of this Chapter.

(v) 39 E. 3. 29. 49 E. 3. 12.

¶ *Avera la terre per Eſcheat.* (u) Eſcheat, Eſchaeta is a word of Art, and deriued from the French word Eſcheat (id eſt) cadere, excidere or accidere, and ſignifieth properly when by accident the Lands fall to the Lord of whom they are holden, in which Caſe we ſay the Fee is eſcheated. And therefore, of ſome, Eſcheats are called excadentiæ, or terræ excadentiales. (w) Dominus vero capitalis loco hæredis habetur quoties per defectum vel delictum extinguitur ſanguis ſui tenentis, loco hæredis & haberi poterit, niſi per modum donationis ſit reverſio cujuſque tenementi. And Ockam (who wrote in the reign of Henry 3.) treating of Tenures of the King, ſaith, Porro eſchaetæ vulgo dicuntur, quæ decedentibus hiis quæ de Rege tenent, &c. cum non exiſtit ratione ſanguinis hæres ad fiſcum relabuntur. (x) So as an Eſcheat doth happen two manner of ways aut per defectum ſanguinis, i. for default of heir. aut per delictum tenentis, i. for felony, and that is by judgment three manner of ways, aut quia ſuſpenſus per collum, aut quia abjuravit regnum, aut quia utlagatus eſt. And therefore, they which are hanged by Martial Law, in furore belli forfeit no Lands: and ſo in like Caſes Eſcheats by the Civilians are called Caduca.

(u) Vide ſect. 130. Glanvill. lib.7. cap.17. Bract. lib.3. fol. 118. Fleta lib.5. cap.5, & lib. 3. cap. 10. Britton ca. 37, & cap.119. F. N. B.100. Tr. 19 E.1. in Banco Rot.25.

(w) Fleta lib. 6. cap.1. Ockam cap. quod non abſolvitur, &c.

(x) Pl.Com.Dame Hales caſe.

(y) The Father is ſeiſed of Lands in Fee holden of I. S. the Son is attainted of high Treaſon, the Father dieth, the Land ſhall eſcheat to I S. propter defectum ſanguinis, for that the Father dieth without heir. And the King cannot have the Land becauſe the Son never had any thing to forfeit. But the King ſhall have the Eſcheat of all the Lands whereof the perſon attainted of high Treaſon was ſeiſed, of whomſoever they were holden.

(y) Pl. Com. in Nichols caſe.

(z) In an Appeal of Death or other Felony, &c. Proceſs is awarded againſt the Defendant, and hanging the proceſs the Defendant conveyeth away the land, & after is outlawed, the conveyance is good and ſhall defeat the Lord of his eſcheat, but if a man be indicted of Felony, and hanging the proceſs againſt him, he conveyeth away the land, and after is outlawed, the Conveyance ſhall not in that caſe prevent the Lord of his Eſcheat. And the reaſon of this diverſity is manifeſt: For in the caſe of the Appeal, the Writ containeth no time when the

(z) 38 E. 3. f.37. 30 H. 6, 5. Bract. l.2. tit. de Forf. Stamf. pl. cor. 192, and according to this diverſity was it reſolved in 5 E.6. as it appeareth by my Lord Dyers Manuſcript.

the Felony was done, and therefore the Eſcheat can relate but to the Outlawry pronounced. But the Indictment containeth the time when the Felony was committed, and therefore the Eſcheat upon the Outlawry ſhall relate to that time. Which caſes I have added, to the end the Student may conceive that the obſervation of Writs, Indictments, Proceſs, Judgments and other Entries, doth conduce much to the underſtanding of the right reaſon of the Law.

(a) Mirror c.1. ſect.5. 51 H.3. ſtatutum de Scac. Britton. fo. 33. 34. Flet.1. cap.36. and lib. 2. cap. 34. 35. Regiſt. 301. his Oath. 18 E. 1. Rot. Parl. 21 E.1. Rot. 1. 29 E. 1.ſtat. de Eſchaetoribus. 14 E.3. c.8. 28 E. 1. c. 18. F. N. B. 100. c. Stamf. Prær.81.1.H.8.c.8.3.H.8. c. 2. Capitula Eſchaetriæ in Vet. Magna Charta. fol. 160, 161, &c.

Of this word (Eſchaeta) here uſed by our Author cometh (a) Eſchaetor, an ancient Officer ſo called, becauſe his office is properly to look to Eſcheats, Wardſhips, and other caſualties belonging to the Crown. In ancient time there were but two Eſcheators in England, the one on this ſide of Trent, and the other beyond Trent, at which time they had Sub-eſchaetors. But in the reign of Edward the ſecond, the Offices were divided, and ſeveral Eſcheators made in every County for life, &c. and ſo continued until the reign of Edward 3. And afterwards by the ſtatute of 14 E. 3. it is enacted by authority of Parliament, that there ſhould be as many Eſcheators aſſigned, as when King Edward 3. came to the Crown, and that was one in every County, and that no Eſcheator ſhould tarry in his Office above a year, and by another ſtatute to be in Office but once in three years; the Lord Treaſurer nameth him.

And hereof alſo cometh Eſchaetria, which ſignifieth the Eſcheatorſhip, or the Office of the Eſcheator. But now let us hear what our Author will further ſay unto us.

¶ Et ſic vide, &c. This kind of ſpeech is often uſed by our Author, and doth ever import matter of excellent obſervation, which you may find in the Sections noted in the margent *.

* Sect. 147,149,248,289.417, 667, &c.

And it is to be well obſerved, that our Author ſaith, Sil nad aſcun heire, &c. la terre eſchaetera. In which words is implied a diverſity (as to the Eſcheat) between Fee ſimple abſolute, which a natural body hath, and Fee ſimple abſolute which a body politique or incorporate hath. (b) For if Land holden of I. S. be given to an Abbot and his Succeſſors: In this caſe if the Abbot and all the Convent die, ſo that the body politique is diſſolved, the Donor ſhall have again this Land, and not the Lord by Eſcheat. And ſo if Land be given in Fee ſimple to a Dean and Chapter, or to a Major and Commonalty, and to their Succeſſors, and after ſuch body politique or incorporate is diſſolved, the Donor ſhall have again the Land, and not the Lord by Eſcheat. And the reaſon and cauſe of this diverſity is, for that in the caſe of a body politique or incorporate the Fee ſimple is veſted in their politique or incorporate capacity created by the policy of man, and therefore the Law doth annex a condition in Law to every ſuch Gift and Grant. That if ſuch body politique or incorporate be diſſolved, that the Donor or Grantor ſhall re-enter, for that the cauſe of the Gift or Grant faileth, but no ſuch condition is annexed to the Eſtate in Fee ſimple veſted in any man in his natural capacity, but in caſe where the Donor or Feoffor reſerveth to him a Tenure, and then the Law doth imply a condition in Law by way of Eſcheat. Alſo (as hath been ſaid) no Writ of Eſcheat lieth but in the three caſes aforeſaid, and not where a body politique or incorporate is diſſolved.

(b) 7 E. 11, 12. F. N. B.33. 9 E.3.26. 17 E,2. ſtat. de templariis.

Sect. 5.

¶ NOw cometh our Author to the deſcent between brethren, which he purpoſely omitted before. ¶ Diſcent, deſcenſus cometh of the Latine word deſcendo, and, in the legal ſenſe, it ſignifieth, when Lands doe by right of blood fall unto any after the death of his anceſtors: or a deſcent is a means whereby one doth derive his title to certain Lands as heir to ſome of his anceſtors. And of this, and of that which hath been ſpoken doth ariſe another diviſion of eſtates in Fee ſimple, viz. every man that hath a lawful eſtate in Fee ſimple, hath it either by deſcent or purchaſe.

¶ Item ſi ſoient trois freres, & le mulnes frere purchaſe terres en Fee ſimple & debie ſauns iſſue, leigne frere avera la terre per diſcent & nemy le puiſne, &c. Et auſi ſi ſoient trois freres & le puiſne purchaſe terres en Fee ſimple & debie ſans iſſue, leigne frere avera la terre per diſcent &

ALſo if there bee three brethren, and the middle Brother purchaſeth Lands in Fee ſimple, and die without iſſue, the elder Brother ſhall have the Land by deſcent, and not the younger, &c. And alſo if there be three Brethren, and the youngeſt purchaſe Lands in Fee ſimple, and die without iſſue; the eldeſt brother ſhall

nemy

nemy le mulnes, pur ceo que leigne eſt pluis digne de ſanke.

have the land by deſcent & not the middle, for that the eldeſt is moſt worthy of blood.

¶ *Leigne eſt pluis digne de ſanke.* It is a maxime in Law that the next of the worthieſt blood ſhall ever inherit, as the male and all deſcendant from him before the female, and the female of the part of the father before the male or female of the part of the mother, &c. becauſe the female of the part of the father is of the worthieſt blood. (c) And therefore among the males the eldeſt brother and his poſterity ſhall inherit lands in fee ſimple, as heir before any younger brother or any deſcending from him becauſe (as Littleton ſaith) he is pluis digne de ſanke. Quod prius eſt dignius eſt, and qui prior eſt tempore potior eſt jure. Si quis plures filios habuerit, jus proprietatis primo deſcendit ad primogenitum, eo quod inventus eſt primo in rerum natura. In King Alfreds time, Knights fees deſcended to the eldeſt ſon, for that by diviſions of them between males the defence of the Realm might be weakned, but in thoſe dayes Socage fee was divided between the heirs males, and therewith agreeth Glanvil. * Cum quis hæreditatem habens moriatur, &c. ſi plures reliquerit filios, tunc diſtinguitur utrum ille fuerit miles, ſive per feodum militare tenens, aut liber Sockmannus, quia ſi miles fuerit aut per militiam tenens, tunc ſecundum jus regni Angliæ primogenitus filius patri ſuccedit in toto, &c. ſi verò fuerit liber Sockmannus, tunc quidem dividetur hæreditas inter omnes filios, &c. But hereof more ſhall be ſaid hereafter in his proper place.

(c) Britton cap. 119. Bract. lib. 2. cap. 30. 277. 279. 3 E. 3. 26. 3 Eliz. Dyer. 138. Stanf. prær. 51. 58. 3 E. 1. tit. avowrie, 225. 32 E. 3. diſcent. 80. Bract. lib. 4. 211. Fleta lib. 6. cap. 2. Glanvill lib. 7. cap. 1. Mirror cap. 1. ſect. 3. * Glanvil lib. 7. cap. 3. & ca. 1. Vide Pl. Com. 229. b.

Sect. 6.

¶ ITem eſt aſcavoir, que nul avera terre de fee ſimple per diſcent cõe heire a aſcun home, ſi non que il ſoit ſon heire dentire ſanke. Car ſi home ad iſſue deux fits per divers venters & leigne purchaſe terres en Fee ſimple & moruſt ſans iſſue, le puiſne frere navera la terre, mes luncle leigne frere ou auter ſon prochein coſin ceo avera, pur ceo que le puiſne frere eſt de demy ſanke al eigne frere.

ALſo it is to be underſtood, that none ſhall have land of Fee ſimple by diſcent as heire to any man, unleſs he be his heire of the whole blood, for if a man hath iſſue two ſons by divers venters and the elder purchaſe lands in Fee ſimple, and dye without iſſue, the younger brother ſhall not have the land, but the uncle of the elder brother, or ſome other his next coſin ſhal have the ſame, becauſe the younger brother is but of half blood to the elder.

¶ NO man can be heire to a fee ſimple by the Common Law (d) but he that hath ſanguinem dupliciatum, the whole blood, that is, both of the father, and of the mother, ſo as the half blood is no blood inheritable by deſcent, becauſe that he that is but of the half blood cannot be a compleat heire, for that he hath not the whole and compleat blood, and the Law in deſcents in fee ſimple doth reſpect that which is compleat and perfect. And this maxime doth not only hold where lands (whereof Littleton here ſpeaketh) are claimed or demanded as heire, (e) but alſo in caſe of appeal of death: for if one brother be ſlain, the other brother of the half blood ſhall never be an appeal (albeit he ſhall recover nothing therein either in the realty or perſonalty) becauſe in the eye of the Law he is not heir to him. Alſo this rule extends to a warranty, as our Author himſelf elſewhere holdeth.

(d) Bract. lib. 4. 279. b. Idem lib. 2. fo. 65. Britton cap. 119. Fleta lib. 6. cap. 1. 1 E. 3. 19. John Gifford's caſe. 31 E. 3. Counterpl. de Voucher 88. 40 Aſſ. 6. 4 E. 2. Formd. 49. Vid. Ratcliffs caſe. lib. 3. fol. 46, 47.

(e) 7 E. 4. 15. ſect. 737.

Sect. 7.

¶ ET ſi home ad iſſue fits & file

ANd if a man hath iſſue a ſon and a

¶ This is put for an example to illuſtrate that which hath been

been ſaid, and needeth not explanation. And herewith agreeth Britton.

Britton cap. 119.

per un venter, & fits per auter venter, & le fits del primer venter purchaſe terres en fee, & mor ſans iſſue, la ſoer avera la terre p diſcent, come herre a ſa frere & nep le puiſne frere, pur ceo que la ſoer eſt de le entire ſanke a ſon eigne frere.

daughter by one venter, and a ſon by another venter, & the ſon of the firſt venter purchaſe lands in fee and dye without iſſue, the ſiſter ſhall have the land by deſcent as heir to her brother, and not the younger brother, for that the ſiſter is the whole blood of her elder brother.

Sect. 8.

¶ *Seiſe de terres en Fee ſimple.* Theſe words exclude a ſeiſin in Fee tail, albeit he hath a Fee ſimple expectant. (f) And therefore if Lands be given to a man and his wife, and to the heirs of their two bodies, the remainder to the heirs of the husband, and they have iſſue a ſon, and the wife dyeth, and he taketh another wife, and hath iſſue a ſon, the father dyeth, the eldeſt ſon entreth, and dieth without iſſue, the ſecond brother of the half blood ſhall inherit, becauſe the eldeſt ſon by his entry was not actually ſeiſed of the fee ſimple, being expectant but onely of the eſtate tail. And the rule is, that Poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem, and here the eldeſt ſon is not poſſeſſed of the Fee ſimple but of the eſtate tail. And where Littleton ſpeaketh onely of Lands (g) yet there ſhall be Poſſeſſio fratris of an uſe, of a ſeigniory, a rent, an advowſon, and of other hereditaments.

(f) 24 E. 3. 24. 30.
31 E. 3. Count de Vouch. 88.
32 E. 3. tit. Voucher.
37 Aſſ. p. 4.
40 E. 3. 9.
42 E. 3. 10.
30 E. 3. fo. 13.
7 H. 5. 3.

(g) 5 E. 4. fo. 7.
Pl. Com. fo. 58. in Wimbiſhes caſe.

¶ *Et leigne fits enter.* (h) Theſe words are materially added when the father dies ſeiſed of lands in fee ſimple, for if the eldeſt ſon doth not in that caſe enter, then without queſtion the youngeſt

(h) 10 Aſſ. 27. 34 Aſſ. 10. 31 E. 3. Count de Vouchee 88. 32 E. 3 tit. Vouch. 94.

¶ ET auſi ou hõe eſt ſeiſe de terres en Fee ſimple, & ad iſſue fits & file p un venter, & fits per auter venter, & mor, & leigne fits enter, & mor ſans iſſue, la file avera les tenements, & nemy le puiſne fits, uncore le puiſne fits eſt heir a le pere, mes nemy a ſon frere, mes ſi leigne fits ne entra en la tre apres la mort ſon pere, mes mor devant aſcun entrie fait per luy, donques le puiſne frere poit enter, & avera le terre come heire a ſon pere. Mes ſi leigne fits en la caſe avantdit entra apres la mort ſon pere, & ad ent poſſeſſion, donques la ſoer avera la tre

And alſo where a man is ſeiſed of lands in fee ſimple and hath iſſue a ſon and daughter by one venter, and a ſon by another venter, and dye, and the eldeſt ſon enter, and dye without iſſue, the daughter ſhall have the land, and not the younger ſon, yet the younger ſon is heir to the father but not to his Brother, but if the eldeſt ſon doth not enter into the land after the death of his father but dye before any entry made by him then the younger brother may enter and ſhall have the land as heir to his father: but where the elder ſon in the caſe aforeſaid enters after the death of his father, and hath

poſ-

Quia poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem. Mes ſi ſont deux freres per divers venters, & leigne eſt ſeiſie de terre en fee, & mor ſans iſſue, & ſon Uncle entra come pzochein heire a luy quel auxy mor ſans iſſue, ore le puiſne frere puit aver la terre come heire al uncle, pur ceo que il eſt de lentier ſanke a luy, coment que il ſoit de demi ſanke a ſon eigne frere.

ſeſſion there the Siſter ſhall have the Land, becauſe *Poſſeſſio fratris de feodo ſimplici facit ſororem eſſe heredem.* But if there be 2 Brothers by divers Venters, and the elder is ſeiſed of Land in fee, and die without iſſue, & his Uncle enter as next Heir to him, who alſo die without iſſue, now the younger Brother may have the Land as Heir to the Uncle, for that he is of the whole bloud to him, albeit he be but of the half bloud to his elder Brother.

ſon ſhall be heir, becauſe as it hath been ſaid before regularly he muſt make himſelf heir to him that was laſt actually ſeiſed (or to the purchaſer) and that was to the father where the eldeſt ſonne did not enter. And therefore Littleton adderh that the ſonne is heir to the father. (i) But when the eldeſt ſonne in this caſe doth enter, then cannot the youngeſt ſonne being of the half bloud be heir to the eldeſt, but the Land ſhall deſcend to the Siſter of the whole bloud. Yet in many caſes albeit the ſonne doth not enter into Lands deſcended in Fee ſimple, the Siſter of the whole bloud ſhall inherit, and in ſome caſes where the eldeſt ſonne doth enter, yet the younger Brother of the half bloud ſhall be heir. (k) If the Father maketh a Leaſe for years, and the Leſſee entreth and dieth, the eldeſt ſonne dieth during the term before entry or receipt of Rent, the younger ſonne of the half bloud ſhall not inherit but the Siſter, becauſe the poſſeſſion of the Leſſee for years, is the poſſeſſion of the eldeſt ſonne, ſo as he is actually ſeiſed of the Fee ſimple, and conſequently the Siſter of the whole bloud is to be heir. The ſame Law it is if the Lands be holden by Knights ſervice, and the eldeſt ſonne is within age, and the Guardian entreth into the Lands. And ſo it is if the Guardian in Socage enter.

(i) 11 H. 4. 11. 40 E. 3. 30. 45 E. 3. 13. 40 Aſſ. p. 6. Ratcliffs Caſe, lib. 3. fol. 31.

(k) 5 E. 4. 7. b. 3 H. 7. 5. 8 Aſſ. p. 6. 45 E. 3. tit. Releaſes 28.

But in the caſe aforeſaid, if the Father make a Leaſe for life or a Gift in tail and dieth, and the eldeſt ſon dieth in the life of Tenant for life or Tenant in tail, the younger Brother of the half bloud ſhall inherit, becauſe the Tenant for life, or Tenant in tail is ſeiſed of the Freehold, and the eldeſt ſon had nothing but reverſion expectant upon that Freehold or eſtate tail, and therefore the youngeſt ſon ſhall inherit the Land as heir to his Father, who was laſt ſeiſed of the actual Freehold. And albeit a Rent had been reſerved upon the Leaſe for life, and the eldeſt ſon had received the Rent and died, yet it is holden by ſome * that the younger Brother ſhall inherit, becauſe the ſeiſin of the Rent is no actual ſeiſin of the Freehold of the Land. But 35. Aſſ. pl. 2. ſeemeth to the contrary, becauſe the Rent iſſueth out of the Land and is in lieu thereof, wherein the only queſtion is, whether ſuch a ſeiſin of Rent be ſuch an actual ſeiſin of the Land in the eldeſt ſon, as the Siſter may in a Writ of right make her ſelf heir of this Land to her Brother. But it is clear that (l) if there be a baſtard eigne, and mulier puiſne, and the Father maketh a Leaſe for life or a Gift in tail by reſerving a Rent and die, and the baſtard receive the Rent and die, this ſhall bar the Mulier, for the reaſon of that ſtandeth upon another Maxime as ſhall manifeſtly appear in his apt place, Sect. 399.

* 7 H. 5. 34. per Hals & Logdington. 35 Aſſ. p. 2.

(l) 14 E. 2. Baſtardy 26. Vid. Sect. 399.

¶ *Seiſie des terres.* (m) But in this caſe if the eldeſt ſon doth enter and get an actual poſſeſſion of the Fee ſimple, yet if the wife of the Father be endowed of the third part and the eldeſt ſon dieth, the younger Brother ſhall have the reverſion of this third part notwithſtanding the elder Brothers Entry, becauſe that his actual ſeiſin which he got thereby was by the endowment defeated. But if the eldeſt ſon had made a Leaſe for life, and the Leſſee had endowed the wife of the Father, and Tenant in dower had died, the daughter ſhould have had the reverſion, becauſe the reverſion was changed and altered by the Leaſe for life, and the reverſion is now expectant on a new eſtate for life.

(m) 7 H. 5. 2, 3, 4.

¶ *Enter.* Hereupon the queſtion groweth, whether if the Father be ſeiſed of divers ſeveral parcels of Land in one County, and after the death of the Father the ſon entereth into one parcel generally, and before any actual Entry into the other dieth, this general Entry into part ſhall veſt in him an actual ſeiſin in the whole, ſo as the Siſter ſhall inherit the whole. And this is a Quære in 21 H. 7. 33. a.

21 H. 7. 33. a.

And ſome do take a diverſity when any entry ſhall veſt or devеſt an eſtate, that there muſt be ſeveral entries in the ſeveral parcels, but where the poſſeſſion is in no man, but the freehold in Law is in the heir that entreth, there the general entry into one part reduceth all into his actual poſſeſſion. And therefore if the Lord entreth into a parcel generally for a Mortmain, or the Feoffor for a condition broken, or the Diſſeiſee into parcel generally, the entry ſhall not veſt or devеſt in theſe or like caſes, but for that parcel. But when a man dies ſeiſed of divers parcels in poſſeſſion, and the freehold in Law is by a Law caſt upon the heir, and the poſſeſſion in no man, there the entry into parcel generally ſeemeth to veſt the actual poſſeſſion in him in the whole. But if his entry in that caſe be ſpecial, viz. that he enter only into that parcel and into no more, there it reduceth that parcel only into actual poſſeſſion.

¶ *Home ſeiſie des terres.* What then is the Law of a Rent, Advowſon or ſuch things that lye in a grant? (g) If a Rent, or an Advowſon do deſcend to the eldeſt ſon, and he dieth before he hath ſeiſin of the Rent, or preſent to the Church, the Rent or Advowſon ſhall deſcend to the youngeſt ſon, for that he muſt make himſelf heir to his father, as hath been oftentimes ſaid before. The like Law is of Offices, Courts, Liberties, Franchiſes, commons of inheritance, and ſuch like. (h) And this caſe differeth from the caſe of the Tenant by the courteſie, for there if the wife dieth before the rent day, or that the Church become void, becauſe there was no laches or default in him, nor poſſibility to get ſeiſin, the Law in reſpect of the iſſue begotten by him will give him an eſtate by the Courteſy of England. But the caſe of the deſcent to the youngeſt ſon ſtandeth upon another reaſon, viz. to make himſelf heir to him that was laſt actually ſeiſed, as hath been ſaid.

(g) 19 E. 2. Quare Imped. 177. 3 H. 7. 5.

(h) 7 E. 3. 66. tit. bar. 293. 3 H. 7. 5.

¶ *En Fee ſimple.* (i) For half blood is not reſpected in eſtates in tail, becauſe that the iſſues do claim in by deſcent, per formam Doni, and the iſſue in tail is ever of the whole blood to the Donee.

(i) 8 E. 3. 11. 49 E. 3. 12. Ratcliffs caſe, lib. 3. f. 41.

¶ (k) *Poſſeſſio fratris de Feodo ſimplici facit ſororem eſſe hæredem.* Hereupon four things are to be obſerved, every word almoſt being operative and material. *Firſt*, That the brother muſt be in actual poſſeſſion: For Poſſeſſio eſt quaſi pedis Poſitio. *Secondly*, De feodo ſimplici, exclude eſtates in tail. *Thirdly*, Facit ſororem eſſe hæredem. So as (l) Soror eſt hæres facti, and therefore ſome act muſt be done to make her heir, and the younger ſon is hæres natus, (m) if no act be done to the contrary. And albeit the words be Facit ſororem eſſe hæredem, yet this doth extend to the iſſue of the ſiſter, &c. who ſhall inherit before the younger brother. *Fourthly*, Of Dignities whereof no other poſſeſſion can be had but ſuch as deſcend (as to be a Duke, Marquels, Earl, Viſcount, or Baron) to a man and his heirs, there can be no poſſeſſion of the brother to make the ſiſter to inherit, but the younger brother being heir (as Littleton ſaith) to the father, ſhall inherit the Dignity inherent to the bloud, as heir to him that was firſt created noble.

(k) Bracton, lib. 2. fol. 65. & lib. 4. fol. 279. Britton cap. 119. Fleta lib. 6. c. 1. 24 E. 3. 30.

(l) Ratcliffs caſe, lib. 3. fol. 43.

(m) Britton cap. 119.

And you ſhall underſtand that concerning Deſcents there is a Law, parcel of the Laws of England, called Jus Coronæ, and differeth in many things from the general Law concerning the Subject. As for example, The King in any Suit or any thing that pertains to the Crown ſhall not ſhew in certain his coſinage as a ſubject ſhall do, or as he himſelf ſhall do for things touching his Dutchy. (n) And in the caſe of the King if he hath iſſue a ſon and a daughter by one venter, and a ſon by another venter, and purchaſeth lands and dieth, and the eldeſt ſon enter and dieth without iſſue, the daughter ſhall not inherit theſe lands, nor any other fee ſimple lands of the Crown, but the younger brother ſhall have them. Wherein note, that neither poſſeſſio fratris doth hold of lands of the poſſeſſions of the Crown, nor half blood is no impediment to the deſcent to the lands of the Crown, as it fell out in experience after the deceaſe of King Edw. the ſixth to Queen Mary, and from Queen Mary to Queen Elizabeth, both which were of the half blood, and yet inherited not onely the Lands which King Edward or Queen Mary purchaſed, but the ancient Lands parcel of the Crown alſo.

6 H. 4. 2.

(n) 34 H. 6. fol. 34. Pl. Com. fol. 245. 25 E. 3. ca. de Natis ultra mare.

A man that is King by deſcent of the part of his mother, purchaſe lands to him and his heirs and dye without iſſue, this land ſhall deſcend to the heir of the part of the mother, but in the caſe of a Subject, the heir of the part of the Father ſhall have them.

Pl. Com. ubi ſupra.

So King Henry the eighth purchaſed Lands to him and his heirs, and died having iſſue two daughters, the Lady Mary, and the Lady Elizabeth, after the deceaſe of King Edward, the eldeſt daughter Queen Mary did inherit onely, all his lands in fee ſimple. For the eldeſt daughter, or ſiſter of a King ſhall inherit all his fee ſimple lands. So it is if the King purchaſed Lands of the cuſtom of Gavelkind, and dye having iſſue divers ſons, the eldeſt ſon ſhall onely inherit theſe Lands. And the reaſon of all theſe caſes is for that the quality of the perſon doth in theſe and many other like caſes alter the deſcent, ſo as all the Lands and poſſeſſions whereof the King is ſeiſed in jure Coronæ, ſhall ſecundum jus Coronæ attend upon and follow the Crown, and therefore to whomſoever the Crown deſcend, thoſe lands and poſſeſſions deſcend alſo, for the Crown and the Lands whereof the King is ſeiſed in jure Coronæ, are concomitantia. If the

Pl. Com. fol. 247.

right

right heir of the Crown be attainted of treaſon, yet ſhall the Crown deſcend to him, and eo inſtante (without any other reverſal) the attainder is utterly avoided, as it fell out in the caſe of Henry the ſeventh. (o) And if the King purchaſe Lands to him and his heirs, he is ſeiſed thereof in jure Coronæ; à fortiori, when he purchaſes land to him, his heirs and ſucceſſors.

Pl. Com. 238. 1 H. 7. fol. 4. (o) 43 H. 3. fol. 20.

But hereof this little taſte ſhall ſuffice.

Sect. 9.

¶ ET eſt aſcavoir que ceſt parol (enheritãce) neſt pas tãtſolement entendue, lou home ad tẽes ou tenements per diſcent denheritage, mes auxi chelcun fee ſimple, ou taile que home ad per ſon purchaſe puit eſtre dit enheritance, pur ceo que ſes heyres luy purtont inheriter. Car en Briefe de Droit que home porta de terre que fuit de ſon purchaſe demeſne, le tẽe dirra: Quam clamat eſſe jus & hæreditatem ſuam. Et iſſint ſerra dit en divers auters briefs, que tõe ou fee porta ď ſ purchaſe demeſn, cõe apiert p le Regiſt.

AND it is to wit, that this word (*inheritance*) is not only intended where a man hath Lands or Tenements by deſcent of inheritage, but alſo every Fee ſimple or tail which a man hath by his purchaſe may be ſaid an inheritance; becauſe his heirs may inherit him. For in a Writ of right which a man bringeth of Land that was of his own purchaſe, the Writ ſhall ſay, *Quam clamat eſſe jus & hæreditatem ſuam.* And ſo ſhall it be ſaid in divers other Writs which a man or woman bringeth of his own purchaſe, as appears by the Regiſter.

¶ *Et eſt aſcavoir*, This kind of ſpeech is uſed twice in this Chapter, and oftentimes by our Author in all his three Books, and ever teacheth us ſome rule of Law or general or ſure leading Point, as you ſhall perceive by reading, and obſerving of the ſame, which for the eaſe of the ſtudious Reader, I have obſerved.

Sect. 43, 46, 57, 59, 80, 100, 146, 164, 170, 184, 229, 243, 259, 274, 280, 293, 300, 305, 419, 420, 421, 489, 632, 697, 749.

¶ *Quam clamat eſſe jus & hæreditatem ſuam.* (a) Here our Author declareth the right ſignification of this word (inheritance.) And true it is, that in the Writ of right Patent, &c. Quando Dominus remittit Curiam ſuam, The words of the Writ be, Quam clamat eſſe jus & hæreditatem ſuam. And in the Præcipe in capite, in a Cui in vita, (b) when the Defendant claimeth by purchaſe, the Writ is Quam clamat eſſe jus & hæreditatem ſuam. And with Littleton agreeth the Regiſter, fol. 4. & 232. and the Book in 49 E. 3. 22. againſt ſodain opinions, 7 H. 4. 5. 10 H. 6, 9. 39 H. 6. 38. Pl. Com. Wimbeſhes caſe 47. And yet in 7 H. 4. 5. which is the Book of the greateſt weight. Sir

(a) Sect. 732. Brad. lib. 2. fol. 62. b. Fleta lib. 6. cap. 1.

(b) Regiſt. fol. 1. 2. Regiſt. fol. 4. 232. 49 E. 3. 22. 7 H. 4. 5. 10 H. 6. 9. 39 H. 6. 38. 6 E. 3. 30. Pl. Com. Wimbeſhes Caſe. 47 & 58. b.

William Thirning, Chief Juſtice of the Common Bench (as it ſeemeth doubting of it) went into the Chancery to enquire of the Chancery men the form of the Writ in that caſe, and they ſaid that the form was both the one way and the other, ſo as thereby the opinion of Littleton is confirmed, and the Book in 6 E. 3. fol. 30. is notable, for there in an Action of waſte the Plaintiff ſuppoſed, that the Defendant did hold de hæreditate ſua, and it is ruled, that albeit the Plaintiff purchaſed the reverſion, yet the Writ ſhould ſerve. And there it is ſaid, It hath been ſeen, that in a Cui in vita, the Writ was, which the Demandant claimed as her right and inheritance, when it was her purchaſe. And ſo this point wherein there might ſeem ſome contrariety in Books is manifeſtly cleared. But in the Statute of W. 2. cap. 5. de hæreditate uxorum, by conſtruction of the whole Statutes is taken onely for the wives inheritance by deſcent: and not by purchaſe, as appeareth in 1 E. 2. tit. Quare imped. 43. 35 H. 6. 54 F. N. B. 34. b.

6 E. 3. 33.

W. 2. Cap. 5. 1 E. 2. tit. Quare imped. 43. 35 H. 6. 54. F. N. B. 34. B.

There be ſome that have an inheritance, (c) and have it neither by deſcent, nor properly by purchaſe, but by Creation, as when the King doth create any man a Duke, a Marqueſſe, Earl, Viſcount, or Baron to him and his heirs, or to the heirs males of his body, &c. he hath an inheritance therein by Creation. A man may have an inheritance in title of Nobility and Dignity, three manner of ways, that is to ſay, by Creation, by Deſcent, and by Pur-

(c) Lib. 6. fol. 52. 53. Counteſs de Rutlands Caſe, lib. 8. fol. 16. 17. the Princes Caſe.

Præſcription. By Creation two manner of ordinary ways (for I will not ſpeak of a Creation by Parliament) by Writ, and by Letters Patents. Creation by Writ, is the ancienter way; and here it is to be obſerved, that a man ſhall gain an inheritance by Writ. King Richard the ſecond, created John Beauchampe de Holte Baron of Kedermiſter by his Letters Patents, bearing date the 10. of Octob. anno regni ſui 11. before whom there was never any Baron created by Letters Patents, but by Writ. And it is to be obſerved, that if he be generally called by Writ to the Parliament, he hath a Fee ſimple in the Barony without any words of inheritance. But if he be created by Letters Patents, the ſtate of inheritance muſt be limited by apt words, or elſe the grant is void. If a man be called by Writ to the Parliament, and the Writ is delivered unto him, and he dieth before he cometh and ſits in Parliament, whether he was a Baron or not. And it is to be anſwered, that he was no Baron, for the direction and delivery of the Writ to him maketh not him Noble: for the better underſtanding whereof, it is to be known that the words of the Writ in that caſe are, Rex, &c. E. B. de D. Chivalier ſalutem. Quia de adviſamento & aſſenſu conſilii noſtri quibuſdam arduis & urgentibus negotiis ſtatum & defenſionem regni noſtri Angliæ, &c. concernentibus quoddam Parliamentum noſtrum apud Civitatem Weſtm̃ à 21. Octob. proxim. futuro teneri ordinavimus, & ibid. vobiſcum & cum Prælatis, Magnatibus, & Proceribus dicti regni noſtri colloquium habere & tractatum, vobis in fide & ligeancia quibus nobis tenemini firmiter injungendo mandamus, quod conſideratis dictorum negotiorum arduitate & periculis imminentibus, ceſſante excuſatione quacunque, dictis die & loco perſonaliter interſitis nobiſcum & cum Prælatis, Magnatibus, & Proceribus ſupra dictis, ſuper dictis negotiis tractatur' veſtrumque concilium impenſur', &c. And this Writ hath no operation or effect, untill he ſit in Parliament, and hereby his bloud is ennobled to him and his heirs lineall, and thereupon a Baron is called a Peer of Parliament. (d) And if iſſue be joyned in any action, whether he be a Baron, &c. or no, it ſhall not be tried by Jury, but by the Record of Parliament, which could not appear, unleſs he were of the Parliament. Therefore a Duke, Earl, &c. of another Kingdom, are not to be ſued by thoſe names here, for that they are not Peers of our Parliament. And albeit the Creation by Writ is the ancienter, yet the Creation by Letters Patents is the ſurer, for he may be ſufficiently created by Letters Patents, & made Noble, albeit he never ſit in Parliament.

(e) And it is to be obſerved, that Nobility may be granted for term of life, by act in Law, without any actual Creation; as if a Duke take a wife, by the intermarriage ſhe is a Dutcheſs in Law, and ſo of a Marquels, an Earl, and the reſt, and in ſome other caſes. And there is a diverſity between a woman that is noble by Deſcent, and a woman that is noble by marriage. (f) For if a woman that is noble by Deſcent, marry one that is under the degree of Nobility, yet ſhe remaineth Noble ſtill; but if ſhe gain it by marriage, ſhe loſeth it; if ſhe marry under the degree of Nobility, and ſo is the rule to be underſtood, Si mulier nobilis nupſerit ignobili, deſinit eſſe nobilis. (g) But if a Dutcheſs by marriage marrieth a Baron of the Realm, ſhe remaineth a Dutcheſs, and loſeth not her name, becauſe her Huſband is Noble, & ſic in cæteris.

And as an eſtate for life may be gained by marriage, ſo may the King create either man or woman noble for life, (b) but not for years, becauſe then it might go to Executors or Adminiſtrators. The true diviſion of perſons is, that every man is either of Nobility, that is, a Lord of Parliament of the upper Houſe, or under the degree of Nobility, amongſt the Commons, as Knights, Eſquires, Citizens and Burgeſſes of the lower Houſe of Parliament, commonly called the Houſe of Commons, and he that is not of the Nobility is by intendment of Law amongſt the Commons.

¶ *Come apiert per le Regiſt.* Which Book in the Statute of W. 2. cap. 24. is called Regiſtrum de Cancellaria, becauſe it containeth the forms of Writs at the Common Law that iſſue out of the Chancery, tanquam ex officina Juſtitiæ. There is a Regiſter of originall Writs, and a Regiſter of judiciall Writs; but when it is ſpoken generally of the Regiſter, it is meant of the Regiſter original. For the antiquity and excellency of this Book, ſee in my Preface to the eighth part of my Commentaries. This excellent Book our Author voucheth divers times in theſe Books, and ſo doth he divers other Authorities in Law of ſeveral kinds. but with this obſervation, that he citeth no Authority; but when the caſe is rare, or may ſeem doubtful, which appeareth in this, that he putteth no Caſe in all his three Books, but hath warrant of good Authority in Law: For he knew well the rule, that Perſpicua vera non ſunt probanda. And the like obſervation is made of Juſtice Fitzherbert in his Book of Natura Brevium, that he never citeth Authority, but when the caſe is rare, or was doubtful to him. The Authorities which our Author hath cited in his three Books, I have collected.

Lib. 6. fol. 52, 53, Counteſs of Rutlands Caſe. 8 H. 6. 10. 48 E. 3. 30. 35 H. 6. 46. Pl. Com. 223.

(d) 35 H. 6. 46. 48 E. 3. 30. b. 48 Aſſ. p. 6. 22. Aſſ. p. 24. Regiſt. 287. 11 E. 3. breve 472. 20 E. 4. 6.

(e) Lib. 6. fol. 52, 53. Counteſs of Rutlands Caſe. 2 H. 6. 11. 22. Aſſ. 24. 12 E. 3. breve 254. 8 H. 4. 19. 11 H. 4. 15. Vide Fleta lib. 6. cap. 10.

(f) Lib. 4. fol. 118. Actons Caſe, Tempore Mariæ Reginæ. Brooke noſme de dignity 69. 14 H. 6. 18. 2 H. 6. 11.

(g) 22 H. 6. 52.

(h) Lib. 9. fol. 97, 98. Sir George Reynels Caſe.

Vide Sect. 88. 94, 96, 101, 157, 234, 318, 383, 412, 420, 433, 514, 643, 644, 657, 660, 692, 702, 729.

Sect. 10.

¶ ET de tiels choſes de queux hõe poit aver un manuel occupation poſſeſſion ou reſceit, ſicõe des terres, tenements, rents, & hujuſmodi, la home dirẽ en count countant, & en plee pledant, que un tiel fuit ſeiſie en ſon demeſne come de fee. Mes de tiels choſes oue ne giſont en tiel Manuel occupation, &c. ſicome de advowſon deſgliſe, & hujuſmodi, la, il dirra que il fuit ſeiſie come de fee, & nemy en ſon demeſne come de fẽ, & en Latin il eſt en lun tas, Quod talis ſei ſitus fuit, &c. in dominico ſuo ut de feodo & en lauter caſe, quod talis ſeiſitus fuit, &c. ut de feodo.

AND of ſuch things whereof a man may have a Manuel occupation, poſſeſſion or receipts, as of lands, Tenements, Rents, and ſuch like, there a man ſhall ſay in his Count Countant and Plea Pleadant, that ſuch a one was ſeiſed in his demeſne as of fee: but of ſuch things which do not lye in ſuch Manual occupation, &c. as of an advowſon of a Church, and ſuch like, there he ſhall ſay, that he was ſeiſed as of fee, and not in his Demeſne as of fee. And in Latine it is in one Caſe, *Quod talis ſeiſitus fuit, &c. in dominico ſuo ut de feodo*, and in the other Caſe, *Quod talis ſeiſitus fuit, &c. ut de feodo.*

¶ IN Count Countant. Count, i. narratio commeth of the French word Conte, which in Latine is Narratio, and is vulgarly called a Declaration. The original writ is according to his name Breve, briefe and ſhort, but the Count which the Plaintiff or Demandant make is more narrative and ſpacious, and certain both in matter and in circumſtance of time and place, to the end, the defendant may be compelled to make a more direct anſwer; ſo as the Writ may be compared to Logick, and the Count to Rhetorick; and it is that which the Civilians call a Libel. And in that ancient book of the Mirrour of Juſtices, Lib. 2. cap. des Loiers, Contors are Serjeants skilful in Law, ſo named of the Count as of the principal part, and in W. 2. cap. 29 he is called Serjeant Counter. Mirrour de des Juſtices. W. 2. cap. 29.

¶ *En plea pleadant.* Placitum, here Littleton teacheth good pleading in this point, of which in his third Book and Chapter of Confirmation, Sect. 534. he thus ſaith, Et ſaches mon fits que eſt un des pluis honorables, laudables, & profitable choſes en neſtre Ley, de aver le ſcience de bien pleade, en actionis reals & perſonels, & pur ceo jeo toy counſaile eſpecialment de mettera ton courage, & cure de ceo apprender bene placitare ſuper omnia placet; And for this cauſe this Word Placitum is derived à placendo, quit and it is not, as ſome have ſaid, ſo called per Antiphraſin, quia non placet.

¶ *Seiſie*; Seiſirus cometh of the French word ſeiſin i. poſſeſſio, ſaving that in the Common law ſeiſed, or ſeiſin, is properly applyed to Freehold, and poſſeſſed or poſſeſſion properly to goods and chattels; altough ſometime the one is uſed in ſtead of the other. Bract. lib. 4. fol. 263. Idem lib. 5. fol. 372. Britton fol. 205, 206. Fleta, lib. 5. cap. 5. Stanf. prær. 8. Pl. Com. fol. 191. Wroteſleyes caſe.

¶ *En ſon demeſne come de fee*, In Dominico ſuo ut in feodo. Dominicum is not only that inheritance, wherein a man hath proper dominion or ownerſhip, as it is diſtinguiſhed from the lands which another doth hold of him in ſervice, but that which is manual occupied, manured, and poſſeſſed for the neceſſary ſuſtentation, maintenance and ſupportation of the Lord and his houſhold, and ſavoureth de domo, of the houſe, either ad menſam, for his or their board and ſuſtentation, or manually received (as rents) for bearing and defraying of neceſſary charges publick or private. Of theſe (ſaith our Author) he ſhould plead, that he is ſeiſed in dominico ſuo ut de feodo, i. de feodo dominicali, ſeu terra dominicali, ſeu reditu dominicali, which is as much to ſay as Demeyne or Demaine, of the hand, i. manured by the hand, or received by the hand, and therefore he calleth it manual occupation, poſſeſſion, or receit. And in Domeſday, Demeane-land is called Inland, as for example, 4. bovatæ terræ de Inland, and 10. bovatæ in ſervitio. Domeſday.

¶ *En tiel manuel occupation*, &c. There is nothing in our Author but is worthy of

of obſervation, here is the firſt (&c) and there is no (&c) in all his three Books (there being as you ſhall perceive very many) but it is for two purpoſes. Firſt, it doth imply ſome other neceſſary matter. Secondly that the Student may together with that which our Author hath ſaid, inquire what authorities there be in Law that treat of that matter, which will work three notable effects: Firſt, it will make him underſtand our Author the better: Secondly, it will exceedingly add to the Readers invention. And laſtly, it will faſten the matter more ſurely in his memory; for which purpoſe, I have for his eaſe in the beginning ſet down in theſe Inſtitutes, the effect of ſome of the principal authorites in Law, as I conceive them concerning the ſame. In this place the (&c.) implyeth poſſeſſion or receipt, and ſuch other matter as appeareth by my notes in this Section. As for the Authorities of Law, you ſhall find the effect of them in this Seaton, and the like of the reſt of the (&c.) which you ſhall find in the Sections hereafter mentioned, omitting thoſe (for avoiding of tediouſneſs) that either are apparent, or which are explained in ſome other places. viz. Sect. 10. 48. 101. 108. 120. 125. 136, 137. 146. 149. 154. 164. 166, 167, 168. 177. 179. 183, 184. 194. 200. 202. 210, 211. 217. 220. 226. 233. 240. 242. 244, 245. 248. 262. 264. 269. 270, 271. 279. 320. 322, 323, 325, 326, 327. 329, 330. 335, 336. 341. 347, 348, 349. 352, 353. 356. 359. 364. 365. 374, 375. 377. 381. 384. 389, 393. 395. 397. 399. 401, 402. 410. 417. 428. 433. 447. 449. 464. 470, 471. 477. 483. 489. 500, 501, 522. 532. 552, 553, 556. 558. 562. 578. 591, 592, 593, 594. 603. 613. 624, 625. 630. 632. 634. 637, 638. 648. 659. 660, 661. 669. 687. 693. 700. 718. 745. 748, 749. All which I have obſerved and quoted here once for all for eaſe of the ſtudious Reader.

Britton 205. 206. optime.
Fleta lib. 6. cap. 51.
Idem lib. 3. cap. 15.

¶ *Ut de feodo.* Where (ut) is not by way of ſimilitude, but to be underſtood poſitively that he is ſeiſed in fee. And ſoit is where one pleads a deſcent to one ut filio & hæredi, that is, to Jo. S. that is, ſon and heir, & ſic de cæteris, where (ut) denotat ipſam veritatem.

(i) 7 E. 3. 63. 24 E. 3. 74. 34 H. 6. 34. 19 E. 3. Quar. imp. 154. Mirrour cap. 2. ſect. 17.

¶ *Si come de advowſon.* Of an Advowſon (i) wherein a man hath as abſolute ownerſhip and property, as he hath in Lands or Rents; yet he ſhall not plead, that he is ſeiſed in Dominico ſuo ut feodo, becauſe that inheritance, ſabouring not de domo, cannot either ſerve for the ſuſtentation of him and his houſhold, nor any thing can be received for the ſame for defraying of charges. And therefore he cannot ſay, that he is ſeiſed thereof in dominico ſuo ut de feodo, whereby it appeareth how the Common Law doth deteſt Simony, and all corrupt bargains for preſentations to any Benefice, but that (k) idonea perſona, for the diſcharge of the Cure ſhould be preſented freely without expectation of any thing; nay, ſo cautious is the Common Law in this point that the Pl. in a Quare impedit ſhould recover no damages for the loſſe of his preſentation, until the ſtatute of W. 2. cap. 5. And that is the reaſon that Gardian in Socage (l) ſhall not preſent to an Advowſon, becauſe he can take nothing for it, and by conſequent he cannot account for it. And by the Law he can meddle with nothing that he cannot account for. (m) And in a writ of right of Advowſon, the Patron ſhall not alleage the expleas, or taking of the profits in himſelf, but in his Incumbent. And hereby the old Books ſhall be the better underſtood, viz. Bract. lib. 4. tract. 3. cap. nu. 5. Eſt autem Dominicum quod quis habet ad menſam, & proprie ſicut ſunt Woodlands Anglice. And Fleta lib. 5. cap. 5. Eſt autem dominicum proprie terra ad menſam aſſignata. Dominicum etiam dicitur, ad differentiam ejus quod tenetur in ſervitio. But of an Advowſon and ſuch like he ſhall plead, that he is ſeiſed de advocatione ut de feodo & jure.

(k) Lib. 6. fol. 51. Boswels caſe.

(l) 8 E. 2. Preſentment al Egliſe 10. 7 E. 3. 39. 27 E. 3. 89. 29 E. 3. 5. 31 E. 3. Estoppel 240.
(m) 7 E. 3. 63. Bracton 263. 372. Fleta lib. 5. cap. 5.

¶ *Advowſon.* Advocatio, ſignifying an advowing or taking into protection, is as much as jus patronatus. Sir William Herle in 7 E. 3. fol. 4. ſaith that it is not long paſt, that a man did know what an Advowſon was; but when a man would grant an Advowſon, he granted Eccleſiam the Church, and thereby the Advowſon paſſed. Vide 45 E. 3. 5. But ſurely the word is of greater antiquity; for in the Regiſter there is an original Writ de recto Advocationis, and in the original Writ of Attaint de darreine preſentment, the Patron is called Advocatus. (n) Vide W. 2. 5. And ſo doth (o) Bracton call him. Advocatus autem dici poterit ille ad quem pertinet jus advocationis alicujus, ut ad Eccleſiam præſentet nomine proprio & non alieno. And (p) Fleta lib. 5. cap. 14. agreeth herewith almoſt totidem verbis: Advocatus eſt ad quem pertinet jus advocationis alterius Eccleſiæ, ut ad Eccleſiam nomine proprio non alieno poſſit præſentare. And (q) Brittonis cap. 92. The Patron is called Avow, and the Patrons are called Advocati, for that they be either Founders or Maintainers, or Benefactors of the Church either by building, donation, or increaſing of it, in which reſpect they were alſo called Patroni, and the advowſon Jus patronatus.

7 E. 3. 4. 45 E. 3. 2.
(n) W. 2. cap. 5.
(o) Bract. lib. 4. fol. 240.
(p) Fleta lib. 5. cap. 14.
(q) Britton cap. 92.
(r) 33 H. 6. 11. b. per Priſot. 14 H. 6. 15. per Newton. 31 E. 1. droit 68, 69. F. N. B. 31. b. Lib. 10. 135, 136. R. Smiths caſe. 45 E. 3. Fines 41. 45 E. 3. 12. 17 E. 3. 78. 17 E. 2. Dower. 163.

And it is to be underſtood that there is a great (r) diverſity inter advocationem medietatis Eccleſiæ, &c. & medietatem advocationis Eccleſiæ. And of their ſeveral remedies for the ſame. For the advowſon of the moyetie is when there be ſeveral Patrons, and two ſeveral Incumbents in one Church, the one of the one moyetie thereof, and the other of the other moyetie, and one

part

part aſwell of the Church as of the Town allotted to the one, and the other part thereof to the other, and in that caſe each Patron if he be diſturbed ſhall have a Quare impedit, quod permittat ipſum præſentare idoneam perſonam ad medietatem Eccleſiæ.

But if there be two Coparceners, and they do agree to preſent by turn, each of them in truth hath but a moyety of the Church, but for that there is but one Incumbent, if either of them be diſturbed, he ſhall have a Quare impedit, &c. præſentare idoneam perſonam ad Eccleſiam; for that there is but one Church, and one Incumbent, and ſo of the like. But in (ſ) the ſaid caſe of two Coparceners, one of them ſhall have a Writ of right of Advowſon, de medietate advocationis, for in truth ſhe hath but a right to a moiety; but in the other caſe, where there be two Patrons and two Incumbents in one Church, each of them ſhall have a Writ of right of Advowſon, De advocatione medietatis.

(ſ) Britton, fol. 235. 21 E. 1. droit. 68, 69. F. N. B. 31. b. c. 33, a. 5 H. 7. 8. 17 E. 3. 38, 75, 76. 7 E. 3. 327. 8 E. 3. 425. 22. Aſſ. p. 33. 14 H. 4. 10. 33 E. 3. Quar. imp. 196.

And as there may (as hath been ſaid) be two ſeveral Parſons in one Church, ſo there may be two that may make but one Parſon in one Church. (t) Britton ſaith, Si aſcun Egliſe ſoit done a divers perſons per un ſole avowe nul ne ſe pura pleadre per aſſiſe de juris utrum ne nul eſtre implede ſauns lautre, &c. And therewith agreeth Fleta, (u) Item licet aliqua Eccleſia diviſa fuerit inter duos, ſive bona ſua habeant communia ſive ſeparata, dum tamen unicum habeant advocatum nullus eorum ſine alio agere poterit vel implacitari. And Fitzh. ſaith, that two Prebendaries may be one Parſon of a Church, who ſhall joyn in a Juris utrum, ſo as one Rector may be annexed to two ſeveral Prebends, and both of them make but one Parſon. But where one is Parſon of the one moytie of a Church, and another of the other moytie, as hath been ſaid, there one of them ſhall have a Juris utrum againſt the other, and in the Writ ſhall name him perſona medietati Eccleſiæ, &c. But for avoiding of ſuſpition of curioſity, if we ſhould proceed any further herein, we will attend what Littleton will further teach us.

(t) Britton, fol. 235. (u) Fleta. lib. 5. cap. 19.

F. N. B. 49. o.

F. N. B. 49. p.

Sect. 11.

¶ Et nota que hõe ne poit aũ pluis ample ou pluis griender eſtate den-heritance, que Fee ſimple.

¶ And note, that a man cannot have a more larger or greater eſtate of inheritance then Fee ſimple.

¶ This doth extend as well to Fæ ſimples conditional and qualified, as to Fæ ſimples pure and abſolute. For our Author ſpeaketh here of the ampleneſſe and greatneſſe of the eſtate, and not of the perdurableneſſe of the ſame. And he that hath a Fæ ſimple he that hath a Fæ ſimple abſolute, ſo as the diverſity appeareth between the quantity and quality of the eſtate. From this ſtate in Fæ ſimple, eſtates in tail, and all other particular eſtates are derived, and therefore worthily our Author beginneth his firſt Book with Tenant in Fæ ſimple, for a principaliori-bus ſue dignoribus eſt inchoandum.

¶ *Ne poit aver pluis ample ou griender eſtate, &c.* For this cauſe two (a) Fæ ſimples abſolute cannot be of one and the ſelf-ſame land. If the King make a Gift in tail, and the Donæ is attainted of Treaſon, in this caſe the King hath not two ſimples in him, viz. the antient reverſion in Fæ, and a Fæ ſimple determinable upon the dying without iſſue of Tenant in tail, but both of them are conſolidated and conjoyned together; and ſo it is if ſuch a Tenant in tail doth not convey the Land to the King, his Heirs and Succeſſors, the King hath but one eſtate in Fæ ſimple united in him, and the Kings Grant of one eſtate is good, and ſo was it adjudged in the Court of Common Pleas. And yet in ſeveral perſons by act in Law, a reverſion may be in Fæ ſimple in one, and a Fæ ſimple determinable in another by matter Ex poſt facto; as if a Gift in tail be made to a Villain, and the Lord enter, the Lord hath a Fæ ſimple qualified, and the Donor a reverſion in fæ; but if the Lord infeoff the Donor, now both Fæ ſimples are united, and he hath but one Fæ ſimple in him: but one Fæ ſimple cannot depend upon another by the Grant of the party; as if Lands be given to H. ſo long as B. hath Heirs of his body, the remainder over in fæ, the remainder is void.

(a) Pl. Com. 349, & 248. 19 H. 8. Dier. 4. 29 H. 8. Dier. 33. 16 Eliz. Dier. 330. 2 Mary Dier. 107. Auſtens Caſe. Pa. 38 Eliz. Rot. 108. In Quar. imp. between the Queen, Pl. and the Biſhop of Lincoln, Huſſey and others Def. 15 E. 4. 6. 8.

Sect. 12.

¶ Item purchaſe eſt appel la poſſeſſion de terres ou

Alſo purchaſe is called the poſſeſſion of Lands or Tene-

¶ Purchaſe in Latine is either acquiſitum, of the verb acquiro, for ſo I find it in the original Regiſter 243. In terris vel tenementis quæ viri

viri & mulieres conjunctim acquiſiverunt, &c. Bracton, calleth it perquiſitum; and by (b) Glanvil, it is called quæſtus or perquiſitum.

Bracton, lib. 2. fol. 65.
(b) Glanvil, lib. 7. cap. 1.
Britt. c. 33. fol. 84, & 121.

A purchaſe is alwayes intended by Title, and moſt properly by ſome kind of conveyance either for money or ſome other conſideration, or freely of Gift: for that is in Law alſo a purchaſe. But a deſcent, becauſe it cometh merely by act of Law, is not not ſaid to be a purchaſe, and accordingly the makers of the act of Parliament in 1 H. 5. cap. 5. ſpeaketh of them that have Lands or Tenements by purchaſe, or deſcent of inheritance. And ſo it is of an Eſcheat, or the like, becauſe the inheritance is caſt upon, or a little veſted in the Lord by act in Law, and not by his own Deed or agreement, as our Author here ſaith; Like Law of the ſtate of Tenant by the Courteſie, Tenant in Dower, or the like. But ſuch as attain to Lands by meer injury and wrong, as by diſſeiſin, intruſion, abatement, uſurpation, &c. cannot be ſaid to come in by purchaſe, no more than Robbery, Burglary, Pyracy, or the like, can juſtly be termed Purchaſe.

Pl. Com. Wimbiſhes Caſe, 47. b.
1 H. 5. cap. 5.

tenements que home ad p̄ ſon fait, ou per agreement, a quel poſſeſſiō il ne advient per title de diſcent de nul de ſes anceſtors, ou de ſes couſins mes per ſon fait demeſne.

ments that a man hath by his Deed or Agreement, unto which poſſeſſion he commeth not by title of deſcent from any of his Anceſtors, or of his Couſins, but by his own Deed.

If a Nobleman, Knight, Eſquire, &c. be buried in a Church, and have his Coat armor and Pennons with his arms, and ſuch other enſigns of honour as belong to his degree or order ſet up in the Church, or if a Grave-ſtone or Tomb be laid or made, &c. for a monument of him. (c) In this caſe, albeit the Freehold of the Church be in the Parſon, and that theſe be annexed to the Freehold; yet cannot the Parſon, or any take them, or deface them but he is ſubject to an action to the heir, and his heirs in the honor & memory of whoſe Anceſtor they were ſet up. And ſo it was holden Mic. 10. Ia. and herewith agreeth the Laws (d) in other Countreys. Note this kind of inheritance: and ſome hold, that the wife or Executors that firſt ſet them up may have an action in that caſe againſt thoſe that deface them in their time. And note, that in ſome places chattels, as heir-looms (as the firſt beſt bed, table, pot, pan, cart and other dead chattels moveable) may go to the heir, and the heir in that caſe may have an action for them at the Common Law, and ſhall not ſue for them in the Eccleſiaſtical Court, but the heir-loom is due by Cuſtom, and not by the Common Law. And the (c) ancient jewels of the Crown are heir-looms, and ſhall deſcend to the next Succeſſor, and are not deviſable by Teſtament.

(c) 9 E. 4. 24.
Mic. 10. Jac. Obiter in Com. Banc. in Pyms Caſe.
(d) B. Caſſanæus, fol. 13. Conc. 29.
30 E. 3. 2, & 3.
39 E. 3. 6, 9, 10.
1 H. 5. tit. Executors 108. tit Deſcent. Br. 43.
9 E. 4. 15. Madam Wiches caſe.
(e) Vide 28 H. 8. 24.

An heir-loom is called principalium or hæreditarium.

Conſuetudo hundredi de Stretford in Com' Oxon eſt, quod hæredes tenentorum infra hundredum prædictum exiſten poſt mortem anteceſſorum ſuorum habebunt, &c. principalium, Anglice an heir-loom, viz. De quodam genere catallor, urenſilium, &c. optimum plauſtrum, optimam carucam, optimum ciphum, &c.

Int. adjudicata coram. Rege Tr. 41 E. 3. lib. 2. fol. 104. in Theſaur. Sect. 241, 242, &c.

Our Author hath not ſpoken of Parceners in this Chapter, for that he hath particular Chapters of the ſame.

Gradus Parentelæ, &c.

Chap. 2. *Sect.* 13.

¶ *Tenant en Fee tail.* Tallium, or Feodum talliatum, is derived of the French word tailler, ſcindere, for ſo Littleton himſelf in this Chapter, Sect. 18. ſaith.

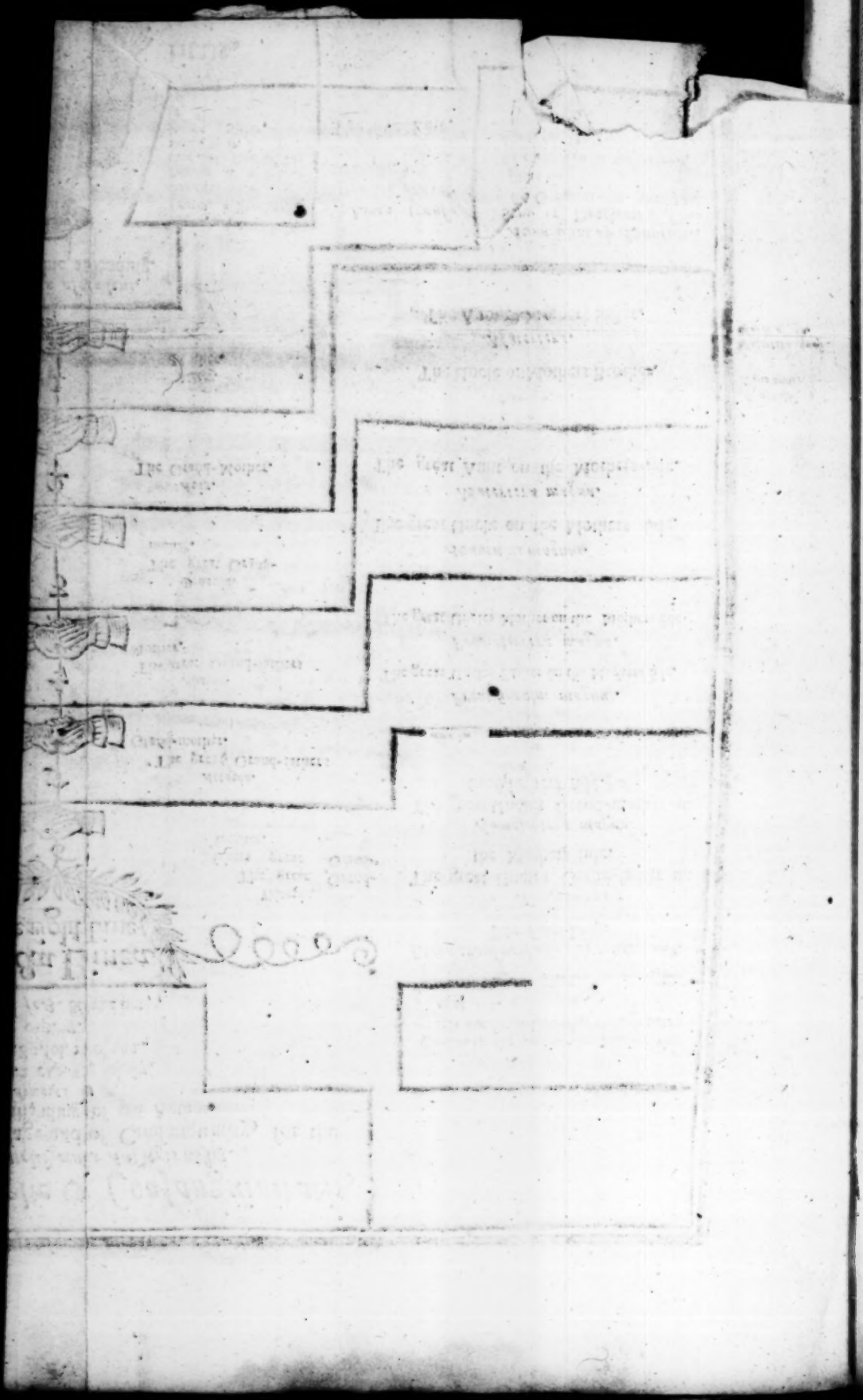
Mirrour, cap. 2. ſect. 15, & cap. 1. ſect. 5.

¶ *Le Statute de W. 2.* This Statute was made in 13. E. 1. and is called Weſt. 2. becauſe the Parliament was

¶ Tenant in Fee taile eſt p̄ force de le ſtatute de Weſt. 2. cap. 2. Car devant l' dit ſtatute, touts Enheritances fuer Fee ſimple; car touts les dones q̄ ſont ſpecifies deins

¶ Tenant in Fee Taile is by force of the Statute of *W. 2. Cap.* 1. for before the ſaid Statute, all inheritances were Fee ſimple; for all the Gifts which be ſpecified in that ſtatute were Fee ſimple

m̄ l' ſtat



Gradus Parentelæ & Conſanguinitatis,

pro meliori intelligentia Authoris noſtri.

The degrees of Parentage and of Conſanguinity, for the better underſtanding of our Author.

Approved by
Bracton, lib. 2. cap. 31. fol. 67.
Britton, cap. 89. fol. 220, 221.
Fleta, lib. 5. cap. 7.
Mirror, c. 1. ſe. 3. & que herit.

Adgnati ex parte Patris.
Couſins on the part of the Father, the more worthy in Diſcents, though farther remote.

Cognati ex parte Matris.
Couſins on the part of the Mother the leſs worthy in Diſcents, though neerer of kin.

Cognati quaſi ſimul nati ex parte matris.

Adgnati quaſi a Patre congniti

Recta Linea. The right Line.

Linea tranſverſalis ſeu collateralis
The ſide Line.

Abpatruus magnus.
The great Uncles Grand-father on the Fathers ſide.

Abamita magna.
The great Uncles Grand Mother on the Fathers ſide.

Tritavus.
The great Grand-fathers great Grand-father.

Tritavia.
The great Grand-fathers great Grand-mother.

Linea tranſverſalis ſeu collateralis.
The ſide Line.

Abavunculus.
The great Uncles Grand-father on the Mothers ſide.

Abmatertera magna.
The great Uncles Grand-mother on the Mothers ſide.

Attavus.
The great Grand-fathers Grand-father.

Attavia.
The great Grand-fathers Grand-mother.

Propatruus magnus.
The great Uncles Father on the Fathers ſide.

Proamita magna.
The great Uncles Mother on the Fathers ſide.

Abavus.
The great Grand-father Father.

Abavia.
The great Grand-fathers Mother.

Proavunculus magnus.
The great Uncles Father on the Mothers ſide.

Promatertera magna.
The great Uncles Mother on the Mothers ſide.

Patruus magnus
The great Uncle on the Fthers ſide.

Amia magna.
The great Aunt on the Fthers ſide.

Proavus.
The great Grand-father.

Proavia.
The great Grand-moher.

Avunculus magnus.
The great Uncle on the Mothers ſide.

Matertera magna.
The great Aunt on the Mothers ſide.

Avus ab Ævo quaſi patre antiquo.

Patruus.
The Uncle or Fathers Brother.

Amita.
The Aunt or Fathers Siſter.

Avus.
The Grand-farher.

Avia.
The Grand-Mother.

Avunculus.
The Uncle or Mothers Brother.

Matertera.
The Aunt or Mothers Siſter.

Avunculus, quaſi Avus minor.

Pater.
Father.

Mater.
Mother.

Linea recta aſcendens.
The right Line aſcending.

Patrueles a Patruo.
Sons or Daughters, Couſin Germans on the Fathers ſide.

Amitini ab Amita.
Sons or Daughters, Couſin Germans on the Father ſide.

Linea tranſverſalis, ſeu collateralis.
The ſide Line.

Frater a Brother.
Semi germanus frater. Brother of one Father, and ſeveral Mothers. *Soror.* Siſter.

Frater, a Brother.
uterinus frater. Brother of one Mother and ſeveral fathers. *Soror.* Siſter.

Linea tranſverſalis, ſeu collateralis.
The ſide Line.

Avunculini ab Avunculo.
Sons or Daughters, Couſin Germans on the Mothers ſide.

Matertерini a matertera.
Sons or Daughters, Couſin Germans on the Mothers ſide.

Matertерini quaſi ex eodem utero fratres ex ſororibus patrimis.

Frater quaſi ferie alter.

Soror quaſi ſortis orta diverſa. Semi germani fratres quaſi ex eodem patre & ſeparatibus matribus nati.

Filius.
Filia.
Filius, a Filia, ab amore parentum.

Horum.
Of theſe.
Filius.
The Son.
Filia.
The Daughter right Couſin Ger.

Propo- ſitus.

Horum
Of theſe.
Filius.
The Son.
Filia
The Daughter right Couſin German.

Linea recta
The right Line.

deſcendens.
deſcending.

Nepos quaſi natis poſt.

Eorum.
Of theſe.
Nepos collat.
The collateral Nephew
Neptis collat.
The collateral Neece.

Filius.
Son.

Filia.
Daugter.

Eorum
Of theſe.
Nepos collat.
The collateral Nephew.
Neptis collat.
The collateral Neece.

Nepos linealis.
The lineal Nephew.

Nepotis linealis.
The lireal Neece.

Eorundem
Of theſe
Pronepos collat.
The collateral Nephews Son.
Proneptis collat.
The collateral Nephews Daughter.
Et ſic in infinitum.

Pronepos linealis.
The lineal Nephews or Nieces ſon

Pronepotis linealis.
The lineal Nephew or Neeces Daughter.

Abnepos linealis.
The grand ſon of the lineal Nephew or Neece

Abneptis linealis.
The grand Daugh. of the lineal Neph. or Neece

Atnepos linealis.
The great grand ſon of the lineal Nephew or Neece

Atneptis linealis.
The great grand Daugh. of the lineal Neph. or Neece

Trinepos linealis.
The great great grand Son of the lineal Nephew or Neece. *Et ſic in infinitum.*

Trineptis linealis.
The great great grand Daughter of the lineal Nephew or Neece. *Et ſic in infinitum.*

1 2 3 4 5 6

Eorundem
Of theſe.
Pronepos collat.
The collateral Nephew
Proneptis collat.
The collateral Neece.

Amita quaſi à ſua terita.

Avus ab Ævo quaſi patre antiquo.

Patruus quaſi loco patris.

Place this next before Folio 19.

en l'statut, fuer fee simple conditional al cõmon ley, cõe appiert p l' rehearsal d'n l' statute. Et oze per tel statut tenãt en le taile est en deux manes, c'est a scavoir, tenant en taile general, & tenãt en taile especial.

conditional at the Common Law, as appeareth by the rehearsal of the same Statute. And now by this Statute, tenant in taile is in two manners, that is to say, Tenant in tail general, and tenant in tail special.

holden at Westminster, & hath the name of the second, because another Parliament was formerly holden at Westminster in the third year of the same Kings reign which was called Westminster the first. And albeit many Parliaments were after holden at Westminster besides these; yet were they two only, propter excellentiam, called the Statutes of Westminster. And the Act intended by Littleton, is W.2. cap.1. Upon which statute our Author in the Inner Temple did learnedly read; whose reading I have. Of King Edw.1. and of this Statute, Mr William Herle chief Justice of the Court of Common Pleas, in 5 E.3.14. saith. That King E.1. was the wisest King that ever was: and the cause of the making of this statute, was to preserve the Inheritance in the blood of them to whom the gift was made: And in 9 E.3.22. he saith, That they were sage men that made this statute. See more of this in the Chapter of Warranties. Sect. 746.

5 E.3.14.

9 E.3.22.

Of this estate Tail it is said, (a) Modus legem dat donationi, & tenend' ejus etiam contentio, quia Modus & Conventio vincunt legem: Ut si alicui cum hoc dono, habendum & tenendum sibi & hæredibus, quos inter eos legitimè procreabunt, ecce quod donator vult talis hæredes in hæreditate paterna & materna succedant, aliis hæredibus eorum remotioribus penitus exclusis: Et quod voluntas donatoris observari debet, manifestè apparet per hoc Statutum: quia aliter dudum Regi durum videbatur, &c.

(a) Fleta lib.3. cap.4. Bract. lib.2. cap.5, &c. Brit. ca.24. & 36.

¶ *Devant le dit Statute (b) touts Inheritances furent Fee simple.* Here Fee simple is taken in his large sense, including as well conditional or qualified, as absolute, to distinguish them from estates in tail since the said Statute. Before which Statute of Donis conditionalibus. If land had been given to a man, and to the heirs males of his body, the having of an issue female had been no performance of the Condition: but if he had issue male, and died, and the issue male had inherited, yet he had not had a Fee simple absolute: (c) for if he had died without issue male, the Donor should have entred as in his reverter. By having of issue, the Condition was performed for three purposes: First, to alien: Secondly, to forfeit, Thirdly, to charge with Rent, Common, &c. the like. But the course of descent was not altered by having issue: for if the Donee had issue and died, and the land had descended to his issue, (d) yet if that issue had died (without any alienation made without issue) his collateral heir should not have inherited, because he was not within the form of the gift, viz. heir of the body of the Donee. (f) Lands were given before the Statute in Frankmarriage, and the Donees had issue and died, and after, the issue died without issue, it was adjudged that his collateral issue shall not inherit, but the Donor shall re-enter. So note, that the heir in tail had no Fee simple absolute at the Common Law though there were divers descents.

(b) Vid. sect. 18. Brit. ca.36. fol.93. Pl. Com.235. 561. Shelley's Case, lib.1. fol. 103.

(c) 44 E.3.3. 30 E.1. Formedon 66. 7 E. 2.6,7. 7 H.4.31. 22 H.6.42.

(d) 18 E.3.46. 18 Ass.p.5. 12 E.4.3.

(f) 4 H.3. Formedon 34. 18 Ass.5. 12 E.4.3. Pl. Com.247. b. 18 E.1. tit. Formedon 58,59.

If lands had been given to a man and to his heirs males of his body, and he had issue two sons, and the eldest had issue a daughter, the daughter was not inheritable to the Fee simple, but the younger son per formam doni. And so if land had been given at the Common Law to a man and the heirs Females of his body, and he had issue a son and a daughter, and died, the daughter should have inherited this Fee simple at the Common Law, for the statute of Donis conditionalibus created no estate tail, but of such an estate as was Fee simple at the Common Law and is descendible in such form as it was at the Common Law. If the Donee in tail had issue before the statute, and the issue had died without issue, the alienation of the Donee at the Common Law, having no issue at that time had not barred the Donor.

(g) If Donee in tail at the Common Law had alienated before any issue had, and after had issue, this alienation had barred the issue, because he claimed a Fee simple. yet if that issue died without issue, the donor might re-enter for that he alienated before any issue at what time he had no power to alien to bar the possibility of the Donor. (h) But if Feme tenant in tail had taken husband, and had issue, and the husband and wife had aliened in Fee by fine before the statute yet the issue might have had a Formedon in descender, for the alienation was not lawful: but otherwise it is, if it had been by fine. And these things though they seem ancient are necessary notwithstanding to be known, chiefly for the knowledge of the Common Law, as for Annuities and such like inheritances as cannot be intailed within the said statute, and therefore remain at the Common Law. (i) If the King before the statute of Donis con-

(g) 30 E.1. Formedon 65. Temps E.1. ibid. 62. 19 E.2. Formedon 61. Pl. Com.246.

(h) 4 E.2. Formedon 30.

(i) 6 E.3.56. Jo. of Eltham's case.

conditionalibus, had made a gift to a man, and to the heirs of his body begotten, the Donee Poſt prolem ſuſcitatam, might have alienedaſwel as in the caſe of a common perſon. (k) But if the Donee had no iſſue, and before the Statute had alienedwith Warranty, and died, and the Warranty had deſcended upon the King, this ſhould not have bound the King of his reverſion without aſſets: but otherwiſe it was in the caſe of a common perſon. (l) Of the other ſide, if lands had been given to the King and to the heirs of his body, he could not before iſſue have alienedin Fee, but only to have barred his iſſue as a common perſon might have done, but not have barred the reverſion, for that ſhould have been a wrong in the caſe of a Subject: and the Kings Prerogative cannot alter his caſe, nor make it greater than the Donor gave unto him: and it is a Maxim in Law, That the King can do no wrong. When all Eſtates were Fee ſimple, then were purchaſers ſure of their purchaſes, Farmors of their leaſes, Creditors of their debts, the King and Lords had their Eſcheats, Forfeitures, Wardſhips, and other profits of their Seigniories: and for theſe and other like caſes, by the wiſdom of the Common Law all Eſtates of inheritance were Fee ſimple, and what contentions and miſchiefs have crept into the quiet of the Law by theſe fettered inheritances, daily experience teacheth us. But ſee more of this matter in the aforeſaid Chapter of Warranty, Sect. 746.

(k) 45 Aſſ. p. 6.

(l) Pl. Com. 246. b.

Lib. 10. f. 38. in Port. caſe.

¶ *Common ley.* See for explication hereof, Sect. 170.

Doct. & Stud. lib. 2. cap. 55.

¶ *Come appiert per le reherſall de meſme leſtatute.* Here, by the authority of our Author, The rehearſal or preamble of a Statute is to be taken for truth, for it cannot be thought that a ſtatute that is made by authority of the whole Realm, as well of the King, as of the Lords Spiritual and Temporal, and of all the Commons, will recite a thing againſt the Truth.

¶ *Et ore per cel ſtatute tenant en taile eſt en 2. Manners*, ſc. *tenant en taile generall, & tenant en taile eſpeciall.*

This diviſion of an eſtate tail is perfect and ſound, For the membra dividentia, viz. generall and ſpecial are converted properly with the thing deſined, and they are proved by many Authorities of Law, and approved of all learned men, and ſo are all the diviſions thorow all his three Books, which the ſtudious and diligent Reader will obſerve. And how excellent and difficule a thing it is to divide rightly and properly, eſpecially in the law, the learned do know.

By this Statute the land is as it were appropriated to the Tenant in tail, and to the heirs of his body, and therefore (r) if an eſtate be made, either before or ſince the Statute of 27 H. 8. c. 10. to a man and the heirs of his body, either to the uſe of another and his heirs, or to the uſe of himſelf and his heirs, this limitation of uſe is utterly void. For before the ſaid Statute of 27 H 8. he could not have executed the eſtate to the uſe, and ſo was it adjudged (ſ) in an Ejectione firmæ, between John Cowper Plaintiff, and Thomas Franklin, &c. Defendant.

(r) 24 H. 8. tit. Feoffments all uſes 4. 27 H. 8. fo.

(ſ) Paſch. 14. Ja. in the Kings Bench.

Sect. 14,15.

¶ TErres, Terra, in his general and legall ſignification (as hath been ſaid before) includeth not onely all kind of grounds, as meadow, paſture, wood, &c. but houſes and all edifices whatſoever. In a more reſtrained ſenſe it is taken for arable ground.

Vid. Sect. 1.

¶ *Tenements*, Tenementa. This is the only word which the ſaid Statute of W. 2. that created Eſtates tail, uſeth, and it includeth not only all corporate Inheritances, which are or may be holden, but alſo all Inheritances iſſuing out of any of

¶ Tenant en taile generall, eſt lou terres ou tenemts ſont dones a un hõe & a ſes heires de ſon corps engendres: En ceo caſe eſt dit generall taile, pur ceo q̃ quelcunq; feme q̃ tiel tenant eſpouſa (ſil avoit pluſors femes, & q̃ chelcun de eux il ad iſſue) uncore chelcun de les iſſues

TEnant in taile generall, is where Lands or Tenements are given to a man, and to his heirs of his body begotten. In this caſe it is ſaid general tail, becauſe whatſoever woman that ſuch tenant taketh to wife (if he hath many wives and by every of them hath iſſue) yet every one of theſe iſſues by poſ-

per poſſibilitie poit enheriter les tenements per force del done, pur ceo que cheſcun tiel iſſue eſt de ſon corps engendre.

poſſibility may inherit the Tenements by force of the gift; becauſe that every ſuch iſſue is of his body ingendred.

¶ *En meſme le maner eſt lou terres ou tenements ſont dones a un feme, & a les heires de ſa corps iſſuants, coment que el avoit divers barons, uncore iſſue que el poit aver per cheſcun baron, poit enheriter come iſſue en le taile per force de tiel done, & pur ceo tielx dones ſont appelles general tailes.*

IN the ſame manner it is where lands and Tenements are given to a woman, and to the heirs of her body, albeit that ſhe hath divers husbands; yet the iſſue which ſhe may have by every Husband may inherit as iſſue in taile by force of this gift. And therefore ſuch gifts are called general tailes.

thoſe inheritances, or concerning, or annexed to, or exerciſable within the ſame, though they lye not in tenure: therefore all theſe without queſtion may be entailed. As (t) Rents, Eſtovers, Commons, or other profits whatſoever granted out of land, or Fees. Offices. Dignities, which concerne Lands or certain places may be entailed without the ſaid Statute, becauſe all theſe favour of the Realty. But if the grant be of an inheritance meer perſonal, or to be exerciſed about Chattels, and is not iſſuing out of land, nor concerning any land, or ſome certain place, ſuch inheritances cannot be entailed, becauſe they favour nothing of the realty. Diverſe examples will illuſtrate and make this learning clear.

(t) 7 E.3.363. 18 E.3.27. 7 H.6.8.32 H. 28. 5 E. 4. 3. 1 H.7.28. 4 H.7.9. 1 H.5. 1 H.8. fol.3. Nevils caſe, lib. fol. 33,34. Pl. Com. in Manxels caſe, fol.2. & 3.

The Writ of Affiſe (u) thus De libero tenemento, and made his plaint of the Office of the fourth part of the Serjeant of the Common Place, and

(u) 7 Aſſ.p.12. 7 E.6.

the Writ adjudged good, and ſeeing that a man hath a Freehold, Liberum tenementum in it, by conſequent it may be intailed.

The Office of the keeping of the Church of our Lady of Lincoln, was intailed, and a Formedon there brought upon the gift of the Office by the iſſue in tail. The (x) Office of the Marſhal of England entailed. The (y) Office of one of the Chamberlains of the Exchequer intailed, 1 H.7.28. The Office of a Foreſtſhip intailed, 4 H.7.10. 9.E.4.56. b. Charters intailed, 19 H.8.3. Uſe intailed. (z) Nomination to a Benefice intailed.

18 E.3.27. (x) 5 E. 4.3. 10 E. 4.14. (y) 11 E.4.1. 1 H.7.28. 4 H.7.10. 9 E.4. 526. 19 H.8.3. 1 H.5.1.

Alſo a name of dignity may be intailed within the Statute, (a) as Dukes, Marqueſſes, Earls, Viſcounts, and Barons, becauſe they be named of ſome County, Mannor, Town, or Place. If the iſſue in tail (b) in a Formedon in the Deſcender be barred by a falſe verdict, his releaſe is no bar to his iſſue, albeit the action is at the Common Law.

(a) Lib.7. fol. 33, 34. Nevils caſe, 28 H.6. Lord Veſcyes caſe. (b) 14 Aſſ.2. 3 Eliz. Dyer 188.

The like Law is of a Writ of Error, 3 Eliz. Dyer 188. If a gift in taile be made with warranty, the Donee releaſes the warranty, this ſhall not bind the iſſue in tail, for in all theſe caſes and the like the ſaid Statute doth enure. But if I grant to a man and to the heires of his body to be Keeper of my Hounds, or Maſter of my Hayes, or to be my Faulconer, or ſuch like, with a fee therefore, yet theſe cannot be intailed within the ſaid Statute, forſmuch they be not iſſuing out of Tenements, nor annexed to, or exerciſable within, or concerning Lands or Tenements of Freehold or Inheritance, but concerning Chattels, and favour nothing of the Realty. And ſo it is if I by my deed for me and my heirs grant an annuity to a man and the heirs of his body, for that this only chargeth my perſon and concerneth no Land, nor favoureth of the Realty.

pl. Com. in Manxels caſe.

In all theſe caſes he hath a fee conditional, as they were before the ſtatute, and the Grantee by his grant or releaſe may bar his heir, as he might have done at the Common Law, for that in theſe caſes he is not reſtrained by the ſaid Statute.

¶ *Et a ſes heirs de ſon corps engendres.* In gifts in taile theſe words (heirs) are as neceſſary, as in Feoffments and Grants; for ſeeing every eſtate tail was a Fee ſimple at the Common Law, and at the Common Law no fee ſimple could be in Feoffments and Grants without theſe words (heirs) and that an eſtate in Fee tail is but a cut or reſtrained Fee. It followeth that in gifts in a manner like time, no Eſtate can be created without theſe words (heirs) unleſs it be in caſe of Frankmarriage, as hereafter ſhall be ſhewn. Any where Littleton ſaith (heirs) yet (heir in the ſingular number is a ſpecial

39 Aſſ. p. 20. 20 H. 6. 35. 5 H. 4. 7. b. 14 H. 4. 15.

case may create an Estate tail, as it appeareth by 39 Aſſ. p. 20. hereafter mentioned, And yet if a man give lands to A. & hæredibus de corpore ſuo, the remainder to B. in forma prædicta, this is a good Estate tail to B. for that in forma prædicta do include the other. If a man letteth lands to A. for life, the remainder to B. in tail, the remainder to C. in forma prædicta, this remainder is void for the incertainty. But if the remainder had been, the remainder to C. in eadem forma, this had been a good Estate tail for Idem ſemper proximo antecedenti refertur, If a man give lands or tenements to a man & ſemini ſuo, or exitibus vel prolibus de corpore ſuo, to a man and to his ſeed or to the iſſues or children of his body, he hath but an eſtate for life, for albeit that the ſtatute provideth that Voluntas Donatoris ſecundum formam in charta doni ſui manifeſtè expreſſam de cætero obſervetur, yet that will and intent muſt agree with the rules of Law. And of this opinion was our Author himſelf, as it appeared in his learned reading aforementioned upon this ſtatute: where he holdeth if a man giveth land to a man & exitibus de corpore ſuo legitimè procreatis, or ſemini ſuo, he hath but an eſtate for life, for that there wanteth words of Inheritance.

Vid. Shelleys caſe, lib. 1. f.

¶ *De ſon corps.* Theſe words are not ſo ſtrictly required, but that they may be expreſſed by words that amount to as much: for the example that the ſtatute of W. 2. putteth, hath not theſe words (de corpore ſuo) but theſe words (hæredibus) viz. Cum aliquis dat terram ſuam alicui viro & ejus uxori & hæredibus de ipſis viro & muliere procreatis. If lands be given to B. (c) & hæredibus quos idem B. de prima uxore ſua legitimè procrearet. This is a good eſtate in eſpecial tail (albeit he hath no wife at that time) without theſe words (de corpore.) So it is (d) if lands be given to a man, and to his heirs which he ſhall beget of his wife: (e) or to a man & heredibus de carne ſuâ, or to a (f) man & hæredibus de ſe. In all theſe caſes theſe be good eſtates in tail, and yet theſe words de corpore are omitted.

(c) 3 E. 3. tit. brève 743. 3 E. 5. tit. Eſtates.
(d) 12 H. 4. 2.
(e) 37 H. 6. 15.
(f) 5 H. 5, 6.

It is holden (g) by ſome opinion, that if there be grandfather, father, and ſon, and lands are given to the grandfather, and to his heirs begotten by the father, the father dieth, the grandfather dieth, the ſon is in as heir to the grandfather begotten upon the body of his father, and the wife of the grandfather in that caſe ſhall be endowed. But certain it is, that in ſome caſes one ſhall have the land per formam doni that is not iſſue of the body of the Donee, which ſee Sect. 30.

(g) 12 H. 4. 2. per Horton.

¶ *Engendres.* This word may in many caſes be omitted or expreſſed by the like, and yet the ſtate in tail is good: as, Hæredibus de carne, hæredibus de ſe, hæred' quos ſibi contigerit, &c. as is aforeſaid, and where the word of Littleton is, ingendred, or begotten, procreatis, yet if the word be procreandis, or quos procreaverit, the eſtate in tail is good; and as procreatis ſhall extend to the iſſues begotten afterwards, ſo procreandis ſhall extend to the iſſues begotten before.

18 E. 2. tit. Bre. 836. 24 E. 3. 28.

Sect. 16.

¶ *Un home & ſa feme.* (a) Then put the caſe that lands be given to a man and a woman unmarried, and the heires of their two bodies: for the apparant poſſibility to marry, they have an eſtate taile in them preſently. (b) So it is where lands be given to the husband of A. and to the wife of B. and to the heirs of their bodies, they have preſently an eſtate in tail, in reſpect of the poſſibility. If a feme ſole doe enfeoffe a married man cauſe Matrimonii prælocuti, it is good for the poſſibility. But put the caſe that the premiſes and the Habendum be in other manner than Littleton hath put, and let us ſe

(a) 5 H. 7. 10 11 E. 3. Formedon 30. Pl. Com. 35.

(b) Lib. 1. fo. 120. Chudleys caſe, 40 Aſſ. pl. 13. 34 Aſſ. pl. 1. Fleta lib. 5. c. 34.

TEnant en taile ſpeciall ſi lou les dit Tenements ſont dones a un home & a ſa feme, & a les heires de lour deux corps engendres, en tiel caſe nul poet inherit p force de le dit done, forſqs ceux q̄ ſont ingendres perent eux deux. Et eſt appel le ſpeciall Taile, pur ceo q̄ ſi la feme deby, & il prent auk feme, & ad iſſue, iſſue del ſe-

TEnant in tail ſpecial is where Lands or Tenements are given to a man and to his wife, and to the heirs of their two bodies begotten; In this caſe none ſhall inherit by force of this gift, but thoſe that be engendered betweene them two: and it is called eſpecial taile, becauſe if the wife dye, and he taketh another wife, & have iſſue, the

cond

cond feme ne ſerra jammes inheritable p force de tiel done, ne auxy liſſue del ſecond baron, ſi le prim Baron debie.

iſſue of the ſecond wife ſhall not inherit by force of this gift, nor alſo the iſſue of the ſecond husband, if the firſt husband die.

what the Law is in theſe caſes. (c) As if a man in the premiſſes give lands to another and the heirs of his body, habendum to him and his heirs for ever. It hath been holden that in this caſe he hath an eſtate tail, and a fee ſimple expectant: And ſo (it (c) 21 H.6,7.

is ſaid) vice verſa, if lands be given to a man and to his heirs in the premiſſes, habendum to him and to the heirs of his body, that he hath an eſtate tail, and a fee ſimple expectant. But vid. l.8. fol.154. b. otherwiſe reſolved, ut patet ibi. (d) If lands be given to B. and to his heirs, to have (d) 30 Aſſ. p.47. and to hold to B. and to his heirs, if B. have heirs of his body, and if he dye without heirs of his 35 Aſſ. p.14. 37 Aſſ.15. body, that it ſhall revert to the Donor, this is adjudged an eſtate tail, and the reverſion in the 5 H.5,6. Donor. (e) For, Voluntas donatoris in charta doni ſui manifeſtè expreſſa obſervetur; and there- (e) W.2. ca.21. fore in the caſe next precedent, if theſe or the like words be added (and if he die without heirs of his body, that the lands ſhall revert to the Donor) that then the Habendum ſhall by authority of divers books be conſtrued upon the whole deed, to be a limitation or a declaration, what heirs are meant in the premiſſes, to inherit, and that in that caſe the reverſion is in the Donor.

(f) If a man make a Charter of feoffment of an acre of land to A. and his heirs, and another deed of the ſame acre to A. and the heirs of his body, and deliver ſeiſin according to the form and effect of both deeds, in this caſe he cannot take a fee ſimple, only, as ſome hold, for that livery was made according to the deed in tail, as well as the Charter in fee, neither can the livery enure only to the deed of eſtate tail with a fee ſimple expectant, for that livery was made as well upon the deed in fee ſimple, as the deed in tail. Therefore others hold, That in that caſe it ſhall enure by moyeties, that is, to habe an eſtate tail in the one moyety, with the fee ſimple expectant, and a fee ſimple in the other moyety: And ſo the livery ſhall work immediately upon both deeds. (f) 2 H.6.25. 43 E.3.20.

Sect. 17.

¶ EN meſme le maner eſt lou tenements ſont dones per un home a un auter ove un Feme, que eſt la file ou couſin al Donour en Frankmarriage, le quel doſſe ad un enheritance per teux parolx (frankmarriage) a ceo, annexe, coment que ne ſoit expreſſement dit, ou reherce en le done, ceſtaſcavoir, que les Donees averont les tenements a eux & a lour heires perenter eux deux engendrez. Et ceo eſt dit eſpecial tail, pur ceo que liſſue del ſe-

¶ IN the ſame manner it is, where Tenements are given by one man to another, with a wife (which is the daughter or couſin to the giver) in frankmarriage, the which gift hath an enheritance by theſe words (frankmarriage) annexed unto it, although it be not expreſſly ſaid or rehearſed in the gift (that is to ſay) that the Donees ſhall have the Tenements to them and to their heires between them two begotten. And this is called eſpecial taile, becauſe

¶ A *Un home one un feme.* Albeit the gift is made of the land to the man with his daughter, &c. yet is the gift good to them both in ſpecial tail, and therefore that of Stephen de la More, in (g) 5 E. 3. is very remarkable, where the caſe was, that Robert gave the reverſion of lands which Agnes his wife did hold for her life to Stephen de la More, Habendum poſt mortem dictæ Agnetis in liberum maritagium cum Johanna filia ejuſdem Roberti, and it is adjudged that it is a good eſtate tail: wherein three things are to be obſerved; *Firſt*, that Joane the daughter took with her husband an eſtate in eſpecial taile, albeit ſhe were named but under a cum, viz. cum Johanna, &c. 2. That that cum doth come after the Habendum, for that it is but all one ſentence. 3. That theſe words, in liberum Maritagium, do create an eſtate of inheritance in eſpecial taile as Littleton Vid. ſect. 19.20. 5 E.3.17. (g) This caſe is vouched in Pl. Com. 158. to be in 4 E.3. which being not found in that year it is there ſo left without any further reference, but you ſhall find it as above ſaid in 5 E.3.17.

tleton saith, Le Donee ad un inheritance per reason de ceux parolx (frankmarriage) a ceo annexe coment que ne soit expectellement dit, &c.

cond seme ne poit inheriter, &c.

the issue of the second wife may not inherit.

W. 2. ca. 1.
19 E 3. tit. tail. 1.

But this had need of some interpretation, for if lands be given by these words (in frankmarriage) according to the rules of the Law, then do these words create an estate of inheritance in special tail: for the consideration of marriage is in that case more favoured in Law than any other consideration: But though the gift be in these words, yet if it be not consonant to the rules of the Law in other things requisite thereunto, there they create but an estate for life. And therefore to speak once for all. Four things be incident to a frankmarriage: First, that it be given for consideration of marriage either to a man with a woman, or as some have held, to a woman with a man: For in (h) 6 E. 3. 33. in Peirs de Saltmarsh his case, a man gave land to his son in frankmarriage, and Fitz N.B. 172. taketh the Law so also. And 7 E. 4. 12. per moyle against a new opinion in temps H. 8. Br. tit. Frankmarriage the former books being not remembred. Secondly, that the woman or man, that is the cause of the gift (i) be of the blood of the Donor, but it may be made as well after marriage as before, and it may be made with a widdow, &c. Thirdly, if the gift be made of such a thing as lyeth in tenure, that the Donees hold of the Donor at the time of the estate in frankmarriage made. A rent service (k) may be given in frankmarriage because it may be holden. And so may a Rent charge or Rent seck as Fitz. N.B. holdeth, and it appeareth in our books that a Common was granted in frankmarriage. Fourthly, that the Donees shall hold freely of the Donor till the fourth degree be past. And therefore if land be given to a woman, with a son of the Donor in frankmarriage, there passeth an inheritance, but if the Donee that is the cause of the gift be not of the blood of the Donor, then there passeth but an estate for life if livery be made. Also if (l) lands be given to a man with a woman of the blood of the Donor in liberum maritagium, the remainder in fee either to a stranger or to the Donees, they have no estate tail, because there is no tenure of the Donor, but if (m) in that case the remainder had been limited to another in tail, reserving the reversion in fee to the Donor, there the said words (in liberum maritagium) create an inheritance, because the Donees hold of the Donor. And this is the cause that it is holden, That a man cannot devise land in frankmarriage because the Donee cannot hold of the Donor. And Cestuy que use before the statute of 27 H. 8. could not have made a gift in frankmarriage, because the reversion was in the Feoffees. (n) And if the Donor doth give lands in liberum maritagium reserving a rent, this reservation shall take no effect till the fourth degree be past, but the frankmarriage is good; for if the reservation should be good, then could not the Donees have an Estate tail for want of words of the heirs of their bodies.

(h) 6 E. 3. 33.
Fitz. N.B. 172.
7 E. 4. 12.
15 E. 2. Cui in vita.
Sect. 24.
(i) 4 E. 3. 8.
31 E. 1. tail 30.
Bracton lib. 2. cap. 7.
(k) 22 R. 2. tit. descent. 50.
Fitz. N. B. 212.
9 H. 6. 35. b.
W. 2. cap. 4. 2c.

(l) Temps H. 8. Br. Frankmar. 11. 13 E. 1. Formedon 63.
Vid. 32 E. 1. tail 25.
2 E. 2. Feoffment & faits. 9.
17 E. 3. 5. 2. 45 E. 3. 20.
(m) 20 E. 2. aid 174.
31 E. 3. Gard. 216.

(n) Bract. lib. 2. cap. 7.
32 E. 1. tail. 31.
13 H. 4. 7. 4 H. 6. 17.
26 Ass. 66. 31 E. 3. gar. 29.

¶ *En Frankmarriage.* Liberum Maritagium, Free marriage. Maritagium is taken for Fee tail, and dividith maritagium into liberum & servitio obligatum: and herewith agreeth Bracton (o) lib. 2. cap. 34. & 39. Maritagium est aut liberum aut servitio obligatum, & lib. 2. cap. 7. num. 3. & 4. Liberum maritagium dicitur, ubi Donator vult quod terra sic data quieta sit & libera ab omni seculari servitio. And so before Bracton, said Glanvil, lib. 7. cap. 18. Maritagium autem aliud nominatur liberum, aliud servitio obnoxium; liberum dicitur maritagium quando aliquis liber homo aliquam partem terræ suæ dat cum aliqua muliere in maritagium, ita quod ab omni servitio terra illa sit quieta, &c. And after both of them, Fleta that followeth them both, lib. 2. cap. 4. saith, Est autem quoddam maritagium liberum ab omni servitio solutum donatori vel eius hæredi, &c. Et est similiter maritagium servitio obligatum & onerosum, &c. And these words (in liberum maritagium) are such words of art, and so necessarily required, as they cannot be expressed by words equipollent, or amounting to as much. As if a man give lands to a man with his daughter in connubio soluto ab omni servitio, &c. Yet there passeth in this case but an estate for life, for seeing that these words (in liberum maritagium) create an estate of inheritance against the general rule of law, the law requireth that they should be legally pursued. But then it may be demanded if a man had given lands at the Common Law, in libero maritagio, whether had the Donees a fee simple without these words (heirs) for that it appeareth by that which hath been said before, that all gifts in tail were fee simple at the Common Law, and that the statutes of W. 2. did not create any estate in fee tail, but out of an estate in fee simple. To this it is answered, that these words (in liberum maritagium) did create an estate in fee simple at the Common Law: and it is holden in 31 E. 3. gard. 116. Per ceux parolx in frankmarriages les donees averont les terres a eux & a lour heirs parentre eux engendres, & ceo est dit especial tail. But yet between Donees in Frankmarriage and other Donees in special tail there be many notable diversities. If the King give land to a man and a woman, and the heirs of their two bodies, and the woman dye without issue, yet shall the man be tenant in tail apres possibilitie. But if the King give land to a man with a woman of his kindred in a frankmarriage, & the woman dieth without issue, the man in the kings case shall not hold it for his life, because the woman was the cause of the gift, but otherwise

(o) Bract. lib. 2. ca. 34. 39. & lib. 2. ca. 3. nu. 3. & 4. Glanvil. lib. 7. ca. 1. & ca. 18.

Fleta lib. 3. cap. 1.

30 E. 1. tit. Formedon 66. adjudg. acc.

31 E. 3. tit. Gard. 116.
Mirror cap. 2. sect. 15. acc.

9 H. 3. Dower, 202.

wiſe it is in the caſe of a common perſon. If lands be given to a man and a woman in eſpecial tail, and they are divorced cauſa præcontractus, both ſhall hold the lands for their lives. But in (p) caſe of frankmarriage, if they be ſo divorced, the woman ſhall enjoy the whole land, becauſe ſhe was the cauſe of the gift. If lands holden in Bocage, (q) be given in eſpecial tail, and the Donees die, the iſſue being within the age of 14 years, (r) the next of kin of the part of the father, or of the part of the mother which can hap the cuſtody ſhall have it; but in caſe of frankmarriage, the heir of the part of the mother ſhall have it, becauſe, as it hath been ſaid, ſhe was the cauſe of the gift.

7 H.4.16.
(p) 13 E.2. tit. Aſſ. 19 E.3. Aſſ.83.
12 Aſſ. 2.
19. Aſſ. 2.
8 E. Aſſ.45.
(q) Pl. Com. Cartis caſe.
(r) 17 H.3. tit. Gard. 146. 27 E.3.79.

Sect. 18.

¶ ET nota, quod hoc verbum (Talliare) idem eſt quod ad quandam certitudinem ponere, vel ad quoddam certum hæreditamentum limitare. Et p̄ ceo q̄ e limit & mis en certaine, quel iſſue enheritera per force de tiels dones, & come longement lenheritance endurera, il eſt appell' e Latin, Feodum talliatum, i. hæreditas in quandam certitudinem limitata. Car ſi tenant in general taile dieth without iſſue, l' Donor ou ſes heirs poient entrer cõe en lour reverſion.

AND note, that this word (*Talliare*) is the ſame as, To ſet to ſome certainty, or, to limit to ſome certain inheritance. And for that it is limited and put in certain, what iſſue ſhall inherit by force of ſuch gifts, and how long the inheritance ſhall endure, it is called in Latine, *Feodum talliatum, i. hæreditas in quandam certitudinem limitata.* For if tenant in general taile dieth without iſſue, the donor or his heirs may enter, as in their reverſion.

¶ *Et nota.* This in our Author throughout his three Books, betokens ſome notable point of inſtruction worthy of more ſpecial obſervation, which is often (ſ) uſed by him, as you may perceive by the Sections noted in the margent.

(ſ) Sect. 18.37.42, 43.49.58. 64.72.89,90. 104. 108. 114. 116.147.158.161.1688.70.188 254.279. 346. 387. 452.467. 618,619.637.642. 670.682. 684.711.717.719.738.

¶ *Feodum talliatum i. hæreditas in quandam certitudinem limitata.* Here our Author doth interpret what Feodum talliatum is. Of all the eſtates taile moſt curtaild or reſtrained that I find in our Books, is the eſtate tail in 39 Aſſ. Pl. 20. where lands were given to a man and to his wife, and to one heir of their bodies lawfully begotten, and to one heir of the body of that heir only. This caſe being adjudged in the point is an exception (ſome ſay) out of the general rule put before by Littleton, Sect. 13. that all eſtates tails were *Fee ſimple* at the Common Law, for (ſay they) by this limitation (hæredi) in the ſingular number, the Donees had not had a *Fee ſimple* at the Common Law. Vide regiſtrum judiciale, fol. 6. a gift made to a man & hæredi maſculo de corpore ſuo.

Weſt.2. cap.3. Pl. Com. 251.2.
39 Aſſ. Pl.20.
Sect.13.
Vide Pl. Com. fol.29.b.
Regiſt. Judic. fol.2.

Sect. 19.

¶ EN meſm̃ l' maner eſt del tenant in ſpecial taile, ac, Car en chescun done en le taile ſauns pluis ouster dire, le reverſion del Fee ſimple eſt en le donor. Et les donees &

IN the ſame manner it is of the Tenant in eſpeciall Taile, &c. For in every gift in taile without more ſaying, the reverſion of the Fee ſimple is in the Donor. And the Donees and

¶ *En chescun done en taile ſans pluis ouster dire, le reverſion del fee ſimple eſt en le donor.* This is wrought by the conſtruction of the Stat. of W. 2. cap. 1. which hath turned the *Fee ſimple* of the Donee into a particular eſtate of inheritance, and the poſſibility of the Donor to a reverſion in him expectant

expectant upon the estate tail, so as there be two inheritances of one land, yet this was doubted in our Books, (t) and there resolved accordingly to Littleton. But I see no cause wherefore that point should be drawn in question, for at the same Session of Parliament (in which the Statute de donis conditionalibus was made) viz. cap. 3. it is expressly said; Vel per Donum, in quo reservatur reversio, so as by the judgment of the same Parliament a reversion was setled in the Donor.

(t) 12 E. 4. 23. 5 H. 7. 14. West. 2. cap. 13. Pl. Com. 247, 248. 251. 562. 2 E. 2. tit. reserit. 147. 33 H. 6. 27. 39 E. 3. 18. 45 E. 3. 20.

¶ *Le reversion del fee simple est en le donor.* A reversion is where the residue of the estate always doth continue in him that made the particular estate, or where the particular estate is derived out of his estate, as herein the case of Litt. Tenant in Fee simple, maketh gift in tail; so it is of a lease for life, or for years. If a man extend lands by force of a Statute Merchant, Staple, Recognizance or Elegit, he leaveth a reversion in the Conusor. But since Littleton wrote, the description must be more large upon the Stat. of (a) 27 H. 8. for at this day, if a man seised of lands in fee, make a feoffment in fee, (and depart with his whole estate) and limit the use to his daughter for life, and after her decease, to the use of his son, in tail, and after to the use of the right heirs of the Feoffor: In this case, albeit he departed with the whole fee simple by the feoffment, and limited no use to himself, yet hath he a reversion: (b) for whensoever the Ancestor takes an estate for life, and after a limitation is made to his right heirs, the right heirs shall not be purchasors. And here in this case when the limitation is to his right heirs, and right heir he cannot have during his life (for, non est hæres viventis) the Law doth create an use in him during his life, until the future use cometh in esse, and consequently the right heirs cannot be purchasors, and no diversity when the Law creates the estate for life, and when the party. And all this was adjudged between (c) Fenwick and Mitford in the Kings Bench; and if the limitation had been to the use of himself for life, and after to the use of another in tail, and after to the use of his own right heirs, the reversion of the fee had been in him, because the use of the fee continued ever in him: and the Statute doth execute the possession to the use in the same plight, quality, and degree, as the use was limited.

(a) 27 H. 8. cap. 10.

(b) 38 E. 3. 26. 27 E. 3. 2ge 118. 24 E. 3. 36. 40 E. 3.

(c) Tr. 31. Eliz. inter Fenwick & Mitford. 32 H. 8. grad. 93. 28 H. 8. Dier 8, 9, 10, &c. Buckeshams case. 5 Mary Dier 163.

(d) If a man make a gift in tail, of a lease for life, the remainder to his own right heirs, this remainder is void, and he hath a reversion in him: for the Ancestor during his life, beareth in his body (in judgment of Law) all his heirs, and therefore it is truly said, that Hæres est pars antecessoris. And this appeareth in a common case, that if land be given to a man and his heirs, all his heirs are so totally in him, as he may give the lands to whom he will.

(d) 1 H. 5. 8. 4 H. 6. 20. 9 Eliz. Dier Bromleyes case.

(e) Dier, 5 Mary 136. Gresswolds case adjudged. Bendlowes Serjeant in his report agreeth.

(e) So it is if a man be seised of lands in fee, and by indenture make a lease for life, the mainder to the heirs males of his own body, this is a void remainder: for the Donor cannot make his own right heir a purchaser of an estate tail, without departing of the whole Fee simple out of him: as if a man make a feoffment in fee to the use of himself for life, and then to the use of the heirs males of his body, this is a good estate tail executed in himself, and the limitation is good by way of use, because it is raised out of the state of the Feoffees, which the Feoffor departed with, and that is apparant, for a limitation of use to himself had without question been good.

(f) 20 Eliz. Dier.

(f) If a man make a feoffment in fee to the use of himself in tail, and after to the use of Feoffee in fee, the Feoffee hath no reversion, but in nature of a remainder, albeit the Feoffor have the estate in tail executed in him by the Statute, and the Feoffee is in by the Common Law, which is worthy of observation.

To

lour issues ferront al Donor & a ses heires auriels services, come le Donor fait a son Seignior prochin a luy Paramount, forsprise les Donees in Frankmarriage, les queux tiendront quietment de chescun manner de service, sinon que soit per fealtie tanque le quart degree soit passe, & apres ceo que le quart degree soit passe lissue en le cinqs degree, & issint ouster lauters des issues apres luy, tiendront del don ou ses heirs come ils teignot ouster, cõe il & avãdit.

their issue shall do to the donor, and to his heirs the like services, as the donor doth to his Lord next Paramount except the donees in Frankmarriage, who shall hold quietly from all manner of service, (unless it be for fealty) until the fourth degree is past, and after the fourth degree is past, the issue in the fifth degree, and so forth the other issues after him, shall hold of the donor or of his heirs as they hold over, as before is said.

To conclude this point, (g) whosoever is seised of land hath not only the estate of the land in him, but the right to take profits which is in nature of the use; and therefore when he makes a Feoffment in fee, without valuable consideration to divers particular uses, so much of the use, as he disposeth not, is in him as his ancient use in point of reverter. As if a man be seised of two Acres the one holden by Knights-service, by priority, and the other by Knights-service holden by posteriority, and maketh a feoffment in fee of both Acres, to the use of himself and his heirs, the old use continued in him, and the priority and posteriority remain. So it is of lands of part of the mother, the use shall go to the heir of the part of the mother, which could not be, if it were not the old use, but a thing newly created: the like law of lands, of the custom of Borough-english, Gavelkind, &c.

(g) 12 H.7.6. 28 H.8. Dyer 12.

5 E.4.7. Lib.1.76. 84,85.100,&c. Chudley. Lib.2. 56, 57, 58. 77,78. Lib.4.22. Lib. 6.34.43.

¶ *Les dones, & lour issues ferront al donor & a ses heires autiels services come le donor fait a son Seignior procheine a luy paramount:* The reason of this is that when by construction of the said Statute, there was a reversion seised in the Donor, for that the Donee had an estate of inheritance, the Judges resolved, that he should hold of his Donor, as his Donor held over: as if the Tenant had made a Feoffment in fee at the Common Law, the Feoffee should have holden of the Feoffor as he held over, and before the Statute of W. 2. the Donee had holden of the Donor as of his person, and now of him as of his reversion: but if a man make a lease for life, or years, and reserve nothing, he shall have fealty only, and no rent, though the Lessor hold over by rent, &c. And this that Littleton saith, is regularly true, if the Donor maketh no special reservation, for then the special reservation excludes the tenure which the Law would create. As if Tenant by Knights-service maketh a gift in tail, reserving fealty and rent; the Donee shall hold in Socage, by fealty and rent, and not by Knights-service. But if a man hold land of the King in Grand Serjeanty and maketh a gift in tail generally, in this case the Donee shall not hold of the Donor by Grand Serjeanty, because no man can hold by Grand Serjeanty, but of the King only, as hereafter shall be said; and therefore seeing Grand Serjeanty doth include Knights-service, he shall in that case hold of the Donor by Knights-service. If a man seised of land in the right of his wife holden by Knights-service, giveth the same lands in tail generally, the Donee shall not hold of him by Knights-service, because his wife held the land, and he had nothing but in her right. And in that case the Baron hath gained a new reversion by wrong, and therefore such a Donee shall do fealty only.

A. seised of two acres of land, holdeth the one of B. by Knights-service, & twelve pence rent, and the other of C. in Socage, and one penny rent, and makes a gift in tail of both acres without any express reservation of any tenure: In this case the Donor hath but one reversion. And yet he shall make several avowries, because there be several tenures created by law in respect of the several tenures ober: and the avowry is made in respect of the tenures.

Lord, Mesne and Tenant, the Tenant holdeth by four pence, and the Mesne by twelve pence, the Tenant makes a gift in tail, without reserving any thing, by reason whereof he holdeth by four pence in respect of the tenure ober. Afterwards the reversion escheat, now shall the Donee hold by twelve pence, for the Mesnalty which was four pence is extinct, and the Law reserved the tenure upon the gift in tail, in respect of the Mesnalty, and when the Mesnalty is extinct, the former rent between the Donor and Donee is extinct also, and then by the same reason that the Donee shall take advantage, if the Donor by release or confirmation had holden by lesser Services, by the same reason he shall be prejudiced, when he holdeth by greater services.

49 E.3.19.

¶ *Forspris les Donees en Frankmarriage.* It is to be understood, that although land be given in liberum maritagium, in free marriage generally, yet first the law doth make a limitation of this word (free) viz. till the fourth degree be past, for the reason that our Author here yieldeth. And 2. albeit it be free marriage, yet the Donees and their issues until the fourth degree be past, shall do fealty, for that is incident to every tenure (except Frankalmoigne) and cannot be separated from it; and therefore the Donees and their issues shall hold it as freely, till the fourth degree be past, as the Donor can make it. See more of this in the Chapter of Frankalmoigne.

Bracton lib.2. fol.21. Britton cap. 119. Fleta lib.3. cap.11. & lib.6. cap.2. Vide sect.17.20.

Sect. 20.

¶ Et les degrees en Frankmariage serront accõpts en tiel manner, s. de

And the degrees in frankmarriage shall be accounted in this manner, *viz.* from

¶ Where Littleton saith, (a) that the Donees in Frankmarriage shall hold by fealty only until the fourth degree

(a) Vide sect.17.19.138.268, 269. 271.733.

degrees be paſt, and then the iſſue in the fifth degree ſhall hold of the Donor as the Donor holdeth over, (b) Vide Bracton ubi ſupra, ita quod ille cui terra ſic data fuit, nullum inde faciat ſervitium uſque ad tertium hæredem & uſque quartum gradum, ita quod tertius hæres ſit incluſus. And herewith alſo agreeth Fleta ubi ſupra. And the (c) learning of Degrees ſet out in the Civil and Canon Law (wherein I find ſome difference) is worth the knowledge, to the end that Littleton and the law in this caſe may the better be underſtood, which I will divide into certain rules: whereof the firſt is, That a perſon added to a perſon in the line of Conſanguinity maketh a degree. And it is to be underſtood, that a line is threefold, viz. the line aſcending, deſcending, and collateral. And firſt for example of the aſcending line, take the Son and add the Father, and it is one degree aſcending: add the Grandfather to the Father, and it is a ſecond degree aſcending.

1. Rule.

2. So as how many perſons there be, take away one, and you have the number of degrees. If there be four perſons, it is the third degree, if five the fourth: for one muſt exceed, and then you have the degree. Likewiſe by the deſcending take the Father and add the Son, and it is one degree; then take the Son and add the Grandchild, and it is the ſecond degree, and ſo likewiſe further. Wherein obſerve, that the Father, Son and Grandchild, albeit there are three perſons, yet they make but two degrees, becauſe (as it hath been ſaid) one muſt exceed for making a degree.

3. It is to be noted, that in every line the perſon muſt be reckoned from whom the computation is made. And there is no difference between the Canon and Civil Law in the aſcending and deſcending line: for thoſe whom the Civilians do reckon in the ſecond degree, the Canoniſts do reckon in the firſt; and thoſe whom they place in the fourth, theſe place in

(b) Glanvil lib. 7. cap. 18. Bract. lib. 2. fol. 21. Britton cap. 119. Fleta lib. 3. cap. 11. & lib. 6. cap. 2.

(c) Vide 10 E. 3. tit. avowry 157. 31 E. 3. ceſſavit. 22. 31 E. 3. gard. 116. 21 H. 7. 30.

le donor a les donees en frankmarriage, le primer degree, pur ceo q̄ la feme que eſt un des donees covient eſtre file, ſoer, ou auk couſin a le donor. Et de les donees tanque a lour iſſue il ſerra accompt le ſecond degree, & de lour iſſue tanque a ſon iſſue, le tierce degree, & illint ouſter, &c. Et la cauſe eſt, pur ceo que apres chelcun tiel done les iſſues queux beignoñ de le donor, & les iſſues queux beignont de les donees apres le quart degree paſſe de ambideux parties en tiel ſorme deſſ accompt, poyent enter eux per la ley de ſaint Eglile entermarry. Et que le donee en Frankmarriage ſerra dit le prime degree de les quart degrees home poit veier en un plee ſur un breve de Droit de Garde P. 21 E. 3. Lou le Pl. counta, que ſon tres-ſaiel fuit ſeiſie de cert terre, &c. & ceo tenuſt dun autre per ſervice de chivaler, &c. quel dona la terre a un Rafe Holland dveſq̄ ſa ſoer en Frankmarriage, &c.

the Donor to the Donees in Frankmarriage the firſt degree, becauſe the wife, that is one of the donees, ought to be daughter, ſiſter, or other coſin to the donor, & from the donees unto their iſſue ſhall be accounted the ſecond degree, & from their iſſue unto their iſſue the third degree, and ſo forth. And the reaſon is, becauſe that after every ſuch gift, the iſſues of the Donor, and the iſſues of the Donees, after the fourth degree paſt of both parties in ſuch form to be accounted, may by the Law of the holy Church, entermarry. And, that the Donee in Frankmarriage ſhall be ſaid to be the firſt degree of the four degrees, a man may ſee in a plea upon a Writ of Right of Ward, P. 21 E. 3. where the Pl. pleadeth, that his great Grandfather was ſeiſed of certain lands, &c. and held the ſame of another by Knight-ſervice, &c. who gave the land to one *Ralph Holland*, with his ſiſter in Frankmarriage, &c.

in the ſecond. Therefore if we will know in what degree two of kindred do ſtand according to the Civil Law; we muſt begin our reckoning from one by aſcending to the perſon from whom both are branched, and then by deſcending to the other to whom we do count, and it will appear in what degree they are. For example, In brothers and ſiſters ſons, take one of them and aſcend to his father, there is one degree from the father to the grandfather, that is the ſecond degree; then deſcend from the grandfather to his ſon, that is the third degree; then from his ſon to his ſon, that is the fourth. But by the Common Law there is another computation, for the Canoniſts do ever begin from the ſtock, namely, from the perſon of whom they do deſcend; of whoſe diſtance the queſtion is; For example, if the queſtion be, In what degree the ſons of two brothers ſtand by the Canon Law? we muſt begin from the grandfather, and deſcend to one ſon, that is one degree; then deſcend to his ſon, that is another degree; then deſcend again from the grandfather to his other ſon, that is one degree; then deſcend to his ſon, that is a ſecond degree: ſo in what degree either of them are diſtant from the common ſtock, in the ſame degree they are diſtant between themſelves: And if they be not equally diſtant, then we muſt obſerve another rule. In what degree the moſt remote is diſtant from the common ſtock, in the ſame degree they are diſtant between themſelves, and ſo the moſt remote maketh the degree. And albeit the Doms be a Couſin in the third or fourth degree from the Donor, yet in this computation it maketh the firſt degree: Gradus dicitur a gradiendo, quia gradiendo aſcenditur & deſcenditur. And thus much of the Civil and Canon Law is neceſſary to the knowledge of the Common Law in this point: And herewith agreeth our Author in the words following.

¶ *Les iſſues queux veignont de le donor, & les iſſues queux veignont de les donees apres le 4. degree paſſe dambideux parties in tiel forme deſte account poient enter eux per le Ley de Saint Egliſe entermarrier.* (De Saint Egliſe) (d) So as hereby it appeareth, That the computation of the degrees in this caſe, muſt be according to the Canon Law. But it is neceſſary to be known concerning marriages between perſons of kindred one to another, that it is enacted (e) by the Statute of 32 H. 8. that no reſervation or prohibition (Gods Law except) ſhall trouble or impeach any marriage without the Levitical degrees.

(d) Brit. cap. 119. Accord. Flet. lib. 3. cap. 11. & lib. 6. c. 28
(e) 32 H. 8. cap. 38.

The caſe vouched by Littleton in 31 E. 3. you ſhall find abridged in Fitzh. tit. grad. 116. And albeit this year of 31 E. 3. was never in print till Fitzherbert did abridge it and publiſh it in print anno 11 H. 8. and goeth under the name of broken years; yet here it appeareth by our Author, that the ſame is of authority in Law, as hereafter alſo in other places ſhall be obſerved.

Sect. 21.

¶ Et touts ceux Tailes avantdits ſont ſpecifies en le dit eſtatute de W. 2. Auxy ſont divers auks eſtates en le taile, coment q̄ ne ſont ſpecifies per expreſſe parols in le dit eſtatute, mes ils ſont priſes per le equity de le dit Statute. Sicome Terres ſont dones a un home & a ſes heires males de ſon corps engendres, en

And all theſe Entailes aforeſaid be ſpecified in the ſaid Statute of *W.* 2. Alſo there be divers other eſtates in taile, though they be not by expreſſe words ſpecified in the ſaid Statute, but they are taken by the equity of the ſame Statute. As if lands be given to a man, and to his heirs males of his body begotten; in this caſe his iſſue male ſhall

¶ *Et touts ceux Tailes avauntdits ſont ſpecifies en le dit Statute de Weſtminſter.* 2. And ſo it appeareth by the ſaid Statute Auxy ſont divers auters eſtates en le taile, &c. And herewith agreeth, Carbonels Caſe, 33 Edw. 3. titulo Taile 51.

That the caſes of the ſtatute are ſet down but for examples of eſtates tail, general and ſpecial, and not to exclude other eſtates taile.

3 E. 3. 32. 18. Aſſ. p. 5. 18 E. 3. 46. 1. Mar. Dyer 46. Pl. Com. Seignior Barkleys caſe, fol. 251. For, Exempla illuſtrant, non reſtringunt legem.

3 E. 3. 32. 18 E. 3. 46. 18 Aſſ. p. 5. 1 Mar. Dyer 46. Pl. Com. 251.

¶ *Equity*

¶ *Equity* is a conſtruction made by the Judges, that caſes out of the letter of a Statute, yet being within the ſame miſchief, or cauſe of the making of the ſame, ſhall be within the ſame remedy that that Statute provideth: And the reaſon hereof is, for that the Law-maker could not poſſibly ſet down all caſes in expreſſe terms. Æquitas eſt convenientia rerum quæ cuncta coæquiparat, & quæ in paribus rationibus paria jura & judicia deſiderat. And again, Æquitas eſt perfecta quædam ratio, quæ jus ſcriptum interpretatur & emendat, nulla ſcriptura comprehenſa, ſed ſolum in vera ratione conſiſtens. Æquitas eſt quaſi æqualitas: Bonus Judex ſecundum æquum & bonum judicat, & æquitatem ſtricto juri præfert. Et jus reſpicit æquitatem.

¶ *Si come terres ſont done a un home & ales* (b) *heires males de ſon corps engendrer, en tiel caſe ſon iſſue male inheritera, & liſſue female ne unques inheritera, &c.* This ſhall be explained afterwards, Sect. 24.

Braſt. lib. 4. fol. 186.
(b) 18. Aſſ. p. 5. 18 E. 3. 46. 33 E. 3. tit. Tail 5. 3 E. 3. 32. Pl. Com. Seigniour Barkleys caſe. 1 Mar. Dyer 46. Vide Sect. 24.

tiel caſe ſ iſſue male inherita, & le iſſue female ñ unqz enherita pas, uncore in l'autre caſes avantdits auterment eſt.

inherit, and the iſſue female ſhall never inherit; and yet in the other entailes aforeſaid, it is otherwiſe.

Sect. 22, & 23.

¶ These two Sections, or any thing therein, do need no explanation, in reſpect they ſhall be alſo explained hereafter in the next Section, ſaving only theſe words; (queux doient inheriter) are very obſervable, for they imply a diverſity between a deſcent & a purchaſe, For when a man giveth lands to a man and his heirs females of his body, and dieth, having iſſue a ſon and a daughter, the daughter ſhall inherit; for the will of the Donor (the Statute working with it) ſhall be obſerved. But in caſe (g) of a purchaſe, it is otherwiſe: for if A. have iſſue a ſon and a daughter, and a leaſe for life be made the remainder to the heirs females of the body of A: A. dieth, the heir female can take nothing, becauſe ſhe is not heir; for ſhe muſt be both heir and heir female, which ſhe is not, becauſe the brother is heir, and therefore the will of the giver cannot be obſerved, becauſe here is no gift, and therefore the Statute cannot work thereupon. And ſo it is if a man hath a ſonne and a daughter and dieth, and lands be given to the daughter, and the heires females of the body of her father, the daughter ſhall take

(g) 9 H. 6. 24. 21 H. 6. 13, 14. 7 H. 8. Br. tit. Done 42. Tit. noſme. 1. & 40. Dyer. 23 El. 374. Shelleys caſe, lib. 1. 10.

¶ Mes le manner eſt, ſi tres ou tenements ſoient dones a un home & a ſes hers females de ſon corps engendres, en tiel caſe ſon iſſue female luy inheritera p force & forme de le dit done, & nemy iſſue male, pur ceo que en tiels caſes de dones faits en le taill, queux doient enheriter, & que nemy la volunt del donor eſt obſerve.

IN the ſame manner it is, if Lands or Tenements be given to a man, and to his heirs females of his body begotten; In this caſe his iſſue female ſhall inherit by force and forme of the ſaid gift, and not his iſſue male. For in ſuch caſes of gifts in taile, the will of the Donor ought to be obſerved, who ought to inherit, and who not.

¶ Et en le caſe q̄ terres ou tenements ſont dones a un home, & a ſes heirs males ſ ſ corps iſſuants, & il ad iſſue deux fils, & deby, & leign filz entra come de male, & ad iſſue file & deby, & fuit aūa la fits, & nemy la file, pur

ANd in caſe where Lands or tenements be given to a man, and to the heirs of his body, and he hath iſſue two ſons, and dieth, and the eldeſt ſon enter as heir male, and hath iſſue a daughter, and dieth; his brother ſhall have the land, and

ceo

reo que le frere eſt heire male. Mes auterment ſerra ẽ auters tailes q̃ ſont ſpecifies en le dit Statute.

not the daughter, for that the brother is heir male. But otherwiſe it is in the other entails, which are ſpecified in the ſaid Statute.

nothing but an eſtate for life, becauſe there is no ſuch perſon the being not heir. But where a gift is made to a man, and to the heirs female of his body, there the Donee being the firſt taker is capable by purchaſe, and the heir female by deſcent, ſecundum formam doni: and therefore Littleton purpoſely adved theſe words, Queux doient inheriter.

Sect. 24.

¶ Auxy ſi terres ſoient dones a un hõe, ẽ a les heires males d̃ ſon corps engendres ẽ il ad iſſue fille, q̃l ad iſſue fils ẽ dedy, ẽ puis apres le donee dedy, ẽ ceſt fils le fils de la fille ne inheritera paſſe p̃ force de le taile, pur ceo que quecunque que ſerra inherit per force dun done en le taile fait as heires males, covient conveyer ſon diſcent tout per les heires males. Mes en tiel taile le Donor poit entrer pur ceo q̃ le donee eſt mort ſans iſſue male en la Ley, entendu que le iſſue del fille ne poet conveyer a luy meſme le diſcent per heire male.

Alſo if lands be given to a man and to the heirs males of his body and he hath iſſue a daughter, who hath iſſue a ſon, and dieth, and after the donee dy: In this caſe, the ſon of the daughter ſhall not inherit by force of the intail, becauſe whoſoever ſhall inherit by force of a gift in tail made to the heires males, ought to convey his deſcent wholly by the heirs males. Alſo in this caſe the Donor may enter, for that the donee is dead without iſſue male in the law, inſomuch as the iſſue of the daughter cannot convey to himſelf the deſcent by an heir male.

¶ *Quecunq; ſerra enheriter per force dun done en Taile, &c.* Vide Tr. (h) 28 H. 6. tit. Deviſe 18. (which is not in the book at large, but written verbatim out of Statham.) If a man deviſe lands to a man, and to the heirs males of his body, and both iſſue a daughter, which hath iſſue a ſon, this ſon ſhall be inheritable; and notwithſtanding in a gift in tail the Law is otherwiſe, and that by the opinion of all the Judges in the Exchequer Chamber. But I hold this caſe to be ill reported, unleſs you will refer the opinion of the Judges to the gift in tail laſt mentioned. For firſt, albeit a Deviſe may create an Inheritance by other words than a gift can yet cannot a Deviſe direct an inheritance to deſcend againſt the rule of Law. Secondly, there is no intent of the Deviſor appearing, that the ſon of the daughter ſhould againſt the rule of Law inherit, & the Statute provideth, that Voluntas Donatoris, &c. obſervetur. And I have heard this caſe often denied to be Law, both in the Kings Bench, and in the Common Pleas, vid. Pl. Comment. 414. b. And ſo it is

Vide ſect. 719.

(h) 1 H. 6. 24. 11 H. 6. 13. 18 H. 6. tit. Deviſe 18. Statham tit. Deviſe. Pl. Com. in Scholaſt. caſe 414. b. 20 H. 6. 43. 27 H. 8. Br. tit. Done & Rem. 61. tit. Noſme 1. & 40.

(i) mutatis mutandis, when a gift in tail is made to a man, and to his heirs females of his body, and he hath iſſue a ſon, who hath iſſue a daughter, this daughter ſhall never inherit, becauſe ſhe muſt convey by deſcent from females. And for the reaſon hereof ſee a notable caſe in 15 E. 2. tit. Corone 385. where it is adjudged (as before it had been) That the ſon of a female ſhould have an appeal of the death of a Couſin, and yet the daughter her ſelf ſhould never have had it. But there it is agreed, that the ſon of a female (k) in a Liberrate probanda, ſhould be no witneſs or proof againſt the iſſue of the male. And the reaſon of this diverſity is very obſervable: for by the Common Law the female might have had an appeal as heir to any of

(l) 11 H. 6. 13.

15 E. 2. tit. Corone 385.

(k) Mirror c. 2. ſect. 7. vide Glanvill libr. 14. cap. 5.

her Anceſtors, as well as the male. But by the ſtat. of Magna Charta, c. 24. Nullus capietur aut impriſonetur propter appellam fœminæ de morte alterius quam viri ſui, which reſtraineth not the ſon of the female. And there Scrope ſaith, Per tout de Serjeants d'Angleterre, that is, by all the Judges of the Coif of England, it was awarded that the iſſue of the female ſhould have an appeal for the death of his Couſin. But in a libertate probanda, the iſſue of the blood female ſhall not be received to prove Villenage in the iſſue of the blood male, for the mother was diſabled by the Common Law, and the mother might be a Neife Deen & trene, that is, of the eſtate and Whip of three cords (meaning ſuch a bondwoman as is uſed to ſervice works and correction) and enfranchiſed by her husband. All which appeareth in the ſaid book. And it is holden in 17 E. 4. 1. that if a man be ſlain which hath no heir of the part of his father, that his uncle of the part of his mother ſhall have an appeal, and yet he muſt of neceſſity make his conveyance by a woman, Vid. 20 H. 6. fo. 33. the queſtion ſuddenly demanded and debated, and no conſideration or mention had of the ſaid former judgments and authorities; there it is compared to a gift in tail to a man and to his heirs males of his body, that the heir male of the daughter ſhall not inherit which hath no affinity to it, and yet the authority of the Book is great, for it is by the aſſent of all the Juſtices of the one Bench and of the other in the Exchequer Chamber, and therefore I leave the learned and judicious Reader to his own judgment. (l) Vide Stanf. 58. b. 15 E. 2. 384. If a man give lands to a man and to his heirs males of his body begotten, remainder to him and to his heirs females on his body begotten, the Donee hath iſſue a ſon who hath iſſue a daughter, who hath iſſue a ſon, this ſon is not inheritable to either of both theſe eſtates tail, becauſe, as Littleton ſaith, The male muſt make his conveyance only by males, and ſo muſt the females by females. But in this caſe the land ſhall revert to the Donor. And therefore the ſafeſt way when a man will entail his lands to the heirs males and females of his body, is to limit the firſt eſtate to him and the heirs males of his body, the remainder to him and to the heirs of his body, and then all his iſſues whatſoever are inheritable. But if A. hath iſſue a ſon and a daughter and dieth, and the ſon hath iſſue a daughter and dieth, and a leaſe for life is made, the remainder to the heirs females of the body of A: In this caſe the daughter of A. ſhall not take, cauſa qua ſupra. But albeit the daughter of the ſon maketh her conveyance by a male, ſhe ſhall take an eſtate tail by purchaſe for ſhe is heir and a female, but if lands be deviſed to one for life, the remainder to the next heir male of B. in tail, and B. hath iſſue two daughters, and each of them hath iſſue a ſon and the father and daughters die, ſome ſay this remainder is void for the uncertainty, ſome ſay that the eldeſt ſhall take it becauſe he is worthieſt, and others ſay that both of them ſhall take for that they both make but one heir. If lands be given to a man and to his heirs males or females of his body he hath an eſtate in general tail in him.

Vid. Seignior de la Wates caſe, lib. 11. fol. 1.

17 E. 4. 1.

20 H. 6. 43.

(l) Standford. 58. b. 15 E. 2. tit. Coron. 384.

11 H. 6. 13. 9 H. 6. 25.

Sect. 25.

¶ *An home, & a ſa feme.* But what if Tenements be given to man and to a woman not being his wife, and to the heirs males of their two bodies, they have alſo an eſtate tail, albeit they be not married at that time. And ſo it is if lands be given to a man which hath a wife, and to a woman which hath a husband, and the heirs of their two bodies, they have preſently an eſtate tail (m) for the poſſibility that they may marry. But if lands be given to two husbands and their wives, and to the heirs of their bodies begotten, (n) they ſhall take a joynt eſtate for life and ſeveral inheritances, viz. the one husband and his wife the one moyety, and the other husband and wife the other moyety, and no croſs remainder or other poſſibility ſhall be allowed by Law, where it is once ſetled and take effect. But if lands be given to a man and two women and heirs of their bodies begotten, (o) In this caſe they have a joynt-eſtate for life and every of them ſeveral inheritance, becauſe they cannot have one iſſue of their bodies, neither ſhall there be by any conſtruction a poſſibility upon a poſſibility, viz. that he ſhall marry the one firſt and then the other. And the ſame Law it is (p) when land is given to two men and one woman, and to the heirs of their bodies begotten.

11 E. 3. Formedon 20.

¶ *Eem meſme le manner eſt, lou tenements ſont done a un hõe, & a ſa feme, & a les heires males de lour deux corps engendrés, &c.*

IN the ſame manner it is, where lands are given to a man and his wife, and to the heires males of their two bodies begotten, &c.

(m) 15 H. 7. 10. lib. 1. Dilon and Frems caſe. 40 Aſſ. p. 13.

(n) 24 E. 3. 29. 2.

(o) 7 H. 4. 16. 16 E. 3. 78. Littleton fol. 66. 15 Eliz. Dyer 326.

(p) 44 E. 3. tit. taile 31. f. 13.

Sect.

Sect. 26, 27.

26, 27. These two Sections need no explanation at all.

¶ ITem ſi tenits ſoient dones a un home & a ſa feme, & a les heires del corps del home engendres, en ceo caſe le baron ad eſtate en le taile generall, & la feme forſq; eſtate pur terme de vie.

ALſo if Tenements be given to a man and to his wife, and to the heirs of the body of the man; in this caſe the Husband hath an eſtate in generall taile, and the wife but an eſtate for terme of life.

¶ ITem ſi terres ſoient dones a le baron & ſa feme, & a les heires le baron, queux il engendra de corps ſa feme, en ceo caſe le baron ad eſtate en le tail ſpecial, & la feme forſque pur terme de vie.

ALſo if Lands be given to the Husband and Wife, and to the heires of the Husband which he ſhall beget on the body of his Wife, In this caſe the Husband hath an eſtate in eſpeciall tail, and the Wife but an eſtate for life.

Sect. 28.

¶ ET ſi le done ſoit fait al baron & a ſa feme, & a les heires la feme de ſa corps per le baron engendres, donque la feme ad eſtate en eſpeciall taile, & le baron forſq; pur terme de vie: Mes ſi terres ſont dones a le baron & a la feme, & a les heires que le baron engendra de corps la feme, en ceo caſe ambideux ont eſtate en la taile, pur ceo que teſt parol (heires) neſt limit a lun pluis que a lauter.

AND if the Gift be made to the Huſband and to his Wife, and to the heirs of the body of the Wife by the husband begotten, there the Wife hath an eſtate in ſpeciall taile, and the Husband but for term of life: but if Lands be given to the Husband & the Wife, and to the heirs which the husband ſhall beget on the body of the Wife, in this caſe both of them have an eſtate tail, becauſe this word (heirs) is not limited to the one more than to the other.

¶ *Heires.* This word (heires) is Nomen operationum, to which of the Donees it is limited, it createth the eſtate taile, but if it incline no more to the one than to the other, then both do take, as here Littleton putteth the caſe. And therewith accordeth the caſe of (q) 3 E. 3. where it appeareth; Quod Robertus de S. dedit Johanni de Riperiis & Matildæ uxori ejus, & hæredibus quos idem Johannes de corpore ipſius Matildæ procrearet, &c. and this adjudged to be an eſtate in eſpecial tail in them both, becauſe the ſtate is equally entailed to the heirs of the baron as to the heirs of the wife. If Lands be given to the husband and the wife, and to the heirs of the body of the ſurvivor, the gift is good, & the ſurvivor ſhall have an eſtate in tail general, but the eſtate tail veſteth not till there be a ſurvivor. And hereby it appeareth (r) that a gift made to a man and to the heirs of his body, is as good as to his heirs of his body.

19 H. 6. 75. a. Regiſt. 239. 17 E. 2. tit. Taile 23. 3 E. 3. 32. 4 E. 3. 43. 5 E. 3. 29. b & 34. a. 21 E. 3. 43, 12 a. H. 4. 1.

(q) 3 E. 3. 32. 21 E. 3. 43. 19 H. 6. 75. per Hody.

Regiſt. 239.

(r) 20 E. 3. Br. 374.

Sect. 29.

¶ This is evident by that which hath been ſaid and needeth no explanation. But it hath been ſaid, (ſ) that if a man give Land to another and to his heirs of the body of ſuch a woman lawfully begotten, that this is no eſtate tail for the uncertainty by whom the heirs ſhall be begotten, for that the Brother of the Donee or other couſin may have iſſue by the woman which may be heir to the Donee, and eſtates in tail muſt be certain.

20 H. 6. 36.
(ſ) Lib. 1. fol. 140. b. Chauleighs Caſe adjudge.

¶ Item ſi terre ſoit done a un home & a les heires que il engendra de cozps ſa feme, en ceo caſe le baron ad eſtate en eſpecial taile, & la feme nad riens.

ALſo if land be given to a man and to his heirs which he ſhall beget on the body of his wife, In this caſe the husband hath an eſtate in eſpecial tail, and the wife hath nothing.

Therefore our Author to make it plain in all his caſes added to theſe words (his heirs) which he ſhall engender. But that opinion is ſince our Author more over-ruled, and that eſtate adjudged to be an eſtate tail, and begotten ſhall be neceſſarily intended begotten by the Donee.

Sect. 30.

¶ *Si home ad iſſue fits & devie, &c.* John de Mandevile by his wife Roberge had iſſue Robert and Mawd, Michael de Morevill gave certain Lands to Roberge and to the heirs of John Mandevile her late husband on her body begotten, and it was adjudged that Roberge had an eſtate but for life, and the fee tail veſted in Robert (heirs of the body of his father being a good name of purchaſe) and that when he died without iſſue, Mawd the daughter was Tenant in tail as heir of the body of her father per formam doni, and the Formedon which ſhe brought ſuppoſed, Quod poſt mortem præfatæ Robergiæ & Roberti filii & hæredis ipſius Johannis Mandevile, & hæred' ipſius Johannis de præfata Robergia per præfatum Johannem procreat' prætat' Matildæ filiæ prædict. Johannis de præfata Robergia per prætatum Johannem procreatæ, ſorori & hæredi prædicti Roberti deſcendere debet per formam donationis prædict'. And yet in truth the Land did not deſcend unto her from Robert, but becauſe ſhe could have no other writ, it was adjudged to be good. In which caſe it is to be obſerved, that albeit Robert being heir took an eſtate tail by purchaſe, and the daughter was no heir of his body at the time of the Gift, yet ſhe recovereth the Land per formam doni, by the name of heir of the body of her Father, which notwithſtanding her Brother was, and he was capable at the time of the Gift; and therefore when the Gift was made ſhe took nothing, but in expectancy, when ſhe became heir per formam doni. But where a man by Deed gave Lands to Emme late wife of John Maſter, habendum & tenendum prædict. Emme & hæredibus Johannis Maſter de corpore ejuſdem Emme procreat'. In that caſe the ſon and heir of John Maſter begotten on the body of Emme took no eſtate with Emme in the Lands, becauſe he was named after the habendum.

17 E. 2. Taile 23. 2 E. 3. 1. tit. Taile 7. 4, & 5. Ph. & Mar. Dyer 156. 12 H. 4. 1. 35 H. 7. 10.

5 H. 4. 3. 2.

If a man hath iſſue two daughters, and dieth ſeiſed of two acres of Land in Fee ſimple, and the one Coparcener giveth her part to her ſiſter, and to the heirs of the body of her Father. In this caſe the Donee hath an eſtate tail in the moiety of the Donors part, for the Donee is not entire heir, but the Donor is heir with the Donee, and ſhe cannot give to the heirs of her own body, and the Donee hath the other part of her ſiſters part for life. If a man hath iſſue a ſon and a daughter, and dieth, and Land is given to the daughter and to the heirs females of

ALſo if a man hath iſſue a ſon and dieth, and land is given to the ſon, and to the heirs of the body of his father begotten, this is a good entail, and yet the father was dead at the time of the Gift. And there be many other eſtates in the tail by the equity of the ſaid Statute, which bee not here ſpecified.

¶ Item ſi home ad iſſue fits, & devie, & terre eſt done al fits, & a les heires de cozps ſon pere engendres, ceo eſt bone taile, & uncore le pere fuit mozt al temps de la done. Et mults autres eſtates en taile y ſont per le equitie del dit eſtatute que ity ne ſont ſpecifies.

of the body of the Father, ſhe taketh but an eſtate for life, becauſe ſhe is not heir female to take by purchaſe as before hath been ſaid.

¶ *Et a les heires de corps le pere.* Theſe words (les heires) are obſervable, for if they were (ſes heires) it clearly altereth the caſe. And therefore if Lands be given to the Son and to his heirs of the body of his Father, the ſon cannot take as heir of the body of his father, becauſe the Grant is to him and his heirs, &c. and conſequently he hath a Fee ſimple. But if there be Grandfather, Father and Son, and the Father dieth, and Lands be given to the Son, and to the heirs of the body of the Grandfather, this is a good Eſtate Tail in the Son, ſo as Littleton did put his caſe of the Father, but for an Example.

¶ *Et mults autres eſtates en le taile y ſont, &c.* This needeth no explanation.

Sect. 31.

¶ MEs ſi home done terres ou tenements a un auter a avez & tener a luy & a ſes heires males, ou a ſes heires females, il a que tiel done eſt fait ad Fee ſimple, pur ceo que neſt my limit per le done de quel corps iſſue male ou female iſſera, & iſſint ne poit en aſcun maner eſtre pryſe per lequitie del dit eſtatute & pur ceo il ad Fee ſimple.

¶ But if a man give Lands or Tenements to another to have and to hold to him and to his heires males, or to his heirs females, he to whom ſuch a Gift is made hath a Fee ſimple, becauſe it is not limited by the Gift, of what body the iſſue male or female ſhall be, and ſo it cannot in any wiſe be taken by the equity of the ſaid Statute, and therefore he hath a Fee ſimple.

¶ *Terres ou tenements.* This rule extendeth but to Lands or Tenements, and not to the Inheritance that Noblemen and Gentlemen habe in their Armories or Arms. For where the Nobleman or Gentleman hath a Fee ſimple in his Armories or Arms, yet is the ſame deſcendible to the heirs males lineal or collateral. For albeit a female be heir at the Common Law, yet the Shield, Armories and Arms deſcend unto them that are able to bear them (farr exceeding the nature of Gavelkinde, but with ſeveral differences.) And all the females of that family, in reſpect that they be of the ſame bloud may in a Loſenge or under a Curtain manifeſt of what family they be by expreſſing the Armories and Arms belonging to that family, and the husband of them may unpale them or quarter them with their own as the caſe ſhall require. And for diſtinction and better explanation hereof. If the King by his Letters Patents giveth Lands or Tenements to a man, and to his heirs males, the Grant is void, for that the King is deceived in his Grant, in as much as there can be no ſuch inheritance of Lands or Tenements as the King intended to grant. But if the King for reward of ſervice granteth Armories or Arms to a man, and to his heirs males without ſaying (of the body) this is good, and as hath been ſaid, they ſhall deſcend accordingly. 18 H.8.tit. Patents. Pl.104.

If a man by his laſt will deviſe Lands or Tenements to a man and to his heirs males, this by conſtruction of Law is an Eſtate tail, the Law ſupplying theſe words (of his body.) Vide the Princes (t) Caſe, where it appeareth that an Act of Parliament may limit an Inheritance of Lands or Tenements, otherwiſe than Common Law would do, and create a new Eſtate of Inheritance and many authorities in Law there cited worthy of note and obſervation. Rot. Parl. anno 1 E.4. nu. 26. The (u) Dutchy of Lancaſter is entailed to K. Edw. 4. and his heirs Kings of England. And King Hen.6. did by his Letters Patents grant Johanni filio Johannis Talbot quod ipſe & hæredes ſui Domini manerii de Kingſton Liſle in comitatu Berk. ex nunc Domini & Barones de Liſle Nobiles & Proceres regni habeantur, teneantur, & reputentur, &c. by this he had a Fee ſimple qualified in the Dignity. 27 H. 8. 27. (t) Lib.8. fol.1. The Princes Caſe. 21 E.3.4. 22 E. 3. 3. 24 E.3.33. 9 H.6.25. 9 E.4.15. 1 Mar. Dyer 94. (u) Per literas patentes authoritate Parliamenti.

2 H. 5. fol. 1, A Grant was made to a man, and to his heirs Tenants of the Manno; of Dale. A man ſeiſed of Lands in Gavelkind, give or deviſe the ſame to a man and to his eldeſt heirs, he cannot hereby alter the cuſtomary Inheritance, but as in the caſe of our Au-

thor, Ut res magis valeat, the Law rejecteth (Males) ſo in this caſe the Law rejecteth this Adjective (eldeſt). And ſo it is if Lands be given to a man, and to the eldeſt heirs females of his body, yet all his daughters ſhall inherit as it hath been reſolved.

Mic. 26, & 27 Eliz. in Com. Banco. Leonard Lovelace Caſe.

¶ *Et iſſint ne poet eſte priſe per lequitie del dit ſtatute, &c.* For it is a certain rule in Law, that in every eſtate in tail within the ſaid Statute, it muſt be limited either by expreſs words or by words equipollent of what body the heir inheritable ſhall iſſue. And it was (x) adjudged in Parliament, that where Lands were given to a man, and to his heirs males, that this was a Fee ſimple, and that as well the heirs females as heirs males could inherit, for the Grant of a Subject ſhall be taken moſt ſtrongly againſt himſelf.

(x) 18 Aſſ. p. 5. 18 E. 3. 46. 6. 9 H. 6. 23. 25. lib. 8. fol. 1. The Princes Caſe. Ancient Tenures, fol. 3.

¶ *Et pur ceo il ad Fee ſimple.* Littletons reaſon being ſhortly collected is this. Whoſoever hath an eſtate of inheritance, hath either a Fee ſimple or a Fee tail, but where Lands be given to a man and his heirs males, he hath no eſtate tail, & therefore he hath a Fee ſimple.

What actions Tenant in Tail may have and cannot have, vide Sect. 595. What great alterations have been made ſince Littleton wrote concerning not onely Leaſes to be made by Tenant in Tail, but bars alſo of the eſtate Tail it ſelf by force of certain Acts of Parliament made ſince Littletons time, you ſhall read Sect 56. and 708.

Chap. 3. Sect. 32.

Tenant in taile apres poſſibility diſſue extinct.

Littleton having ſpoken of Eſtates of Inheritance, viz. Fee ſimple and Fee tail, now he treateth of Tenants of freehold tantum, that is, for term of life, and therein firſt of Tenant in tail after poſſibility of iſſue extinct, and he giveth unto him the firſt place, becauſe this Tenant hath eight qualities and priviledges; which Tenant in Taile himſelfe hath, and which Leſſee for life hath not. (a) As firſt he is diſpunishable for waſte. Secondly, he ſhall not be compelled to attorn. Thirdly, he ſhall not have aid of him in the reverſion. Fourthly, upon his alienation, no Writ of Entry in conſimili caſu, lieth. Fifthly, after his death no Writ of intruſion doth lie. Sixthly, he may joine the Miſe in a Writ of right, in a ſpecial manner. Sedenthly, In a Præcipe brought by him he ſhall not name himſelfe Tenant for life. Eighthly, In a Præcipe brought againſt him he ſhall not be named barely, Tenant for life. And yet he hath four other qualities which are not agreeable to an

(a) Temps E. 1. waſt. 125. 39 E. 3. 16. 31 E. 3. aid 35. 42 E. 3. 22. 43 Eſt. 1. 45 E. 3. 22. 28 E. 3. 96. 46 E. 3. 13, 27. 2 H. 4. 17. 7 H. 4. 10. 11 H. 4. 15. 21 H. 6. 56. 10 H. 6. 1. 26 H. 6. aid. 77. 3 E. 4. 11. 13 E. 2. Entre Conge 56. Fitz. N. B. 203. Lewes Bowles Caſe, lib. 11. fol. 8.

¶ Tenant en Fee taile apres poſſibilitie diſſue extinct eſt, lou tenements ſont dones a un home & a ſa feme en eſpecial taile, ſi lun de eux deby ſans iſſue, celuy que ſurveſquiſt eſt Tenant en taile apres poſſibilitie diſſue extinct. Et ſils aveient iſſue, & lun deby, coment que durant la vie, liſſue celuy que ſurveſquiſt ne ſerra dit tenant en taile apres poſſibilitie diſſue extinct, uncore ſi liſſue deby ſans iſſue, iſſint que ne ſoit aſcun iſſue, en vie que poit inheriter p force de le taile, donque celuy que ſurveſquiſt

Tenant in Fee tail after poſſibility of iſſue extinct is, where Tenements are given to a man and to his Wife in eſpeciall taile, if one of them die without iſſue, the ſurvivor is Tenant in Tail after poſſibility of iſſue extinct, & if they have iſſue, and the one die, albeit that during the life of the iſſue, the ſurvivor ſhall not be ſaid Tenant in Taile after poſſibility of iſſue extinct, yet if the iſſue die without iſſue, ſo as there be not any iſſue alive which may inherit by force of the Taile, then the ſurviving party of the Do-

de

de les donees eſt tenant en le taile apres poſſibility diſſue extinct.

nees is tenant in taile, after poſſibility of iſſue extinct.

reverſion, or remainder deſcend or come to this Tenant, his Eſtate is drowned, and the fee or fee tail executed. Thirdly, he in the reverſion or remainder ſhall be received upon his default, as well as upon bare Tenant for life. Fourthly, an exchange between a bare Tenant for life and him is good for their eſtates in reſpect of their quantity are equal, ſo as the difference ſtandeth in the quality, and not in the quantity of the Eſtate. And as an Eſtate tail was originally carved out of a Fee ſimple, ſo is the Eſtate of this Tenant out of an Eſtate in ſpecial tail. And he is called Tenant in tail after poſſibility of iſſue extinct, becauſe by no poſſibility he can have any iſſue inheritable to the ſame Eſtate tail. But if a man giveth Land to a man and his wife, and to the heirs of their two bodies, and they live till each of them be C. years old, and have no iſſue; yet do they continue Tenant in tail, for that the Law ſeeth no poſſibility of having Children. But when a man and his wife be Tenant in ſpecial tail, and the wife dieth without iſſue, there the Law ſeeth an apparent impoſſibility, that any iſſue that the Husband can have by any other wife ſhould inherit this Eſtate. And let this Tenant keep his eſtate, for he hath theſe privileges in reſpect of the privity of his Eſtate, and of the inheritance that was once in him. (c) For in the caſe of Evens, Mic. 28 & 29 Eliz. it was adjudged, that where Tenant in tail, after poſſibility of iſſue extinct, granted over his Eſtate to another; that his Grantee was compelled to attorn in a Quid juris clamat, as a bare Tenant for life, and ſo be named in the Writ, for, by the aſſignment, the privity of the Eſtate being altered, the privilege was gone, and this judgment was affirmed in a Writ of Error, and herewith agreeth 27 H. 6. tit. aid. Statham, 29 E. 3. 1. b.

Eſtate in tail, but to a bare Leſſe for life. (b) Firſt, if he maketh a feoffment in Fee, this is a forfeiture of his Eſtate. Secondly, If an Eſtate in fee, or in Fee tail in

(b) 13 E.2. Entre Conge 56. 45 E.3.22. 28 E.3.96. 27 Aſſ. p. 60. F. N. B. 159. 32 E.3. tit. ag. 55. 55 E.3.4. 9 E.4.17. 2 R 2. Reiceit.147. 41 E.3.12. 20 E.3. Reſceit. 38 E.3.33. Lewis Bowles. Caſe, ubi ſupra.

(c) Lib.11. fol.3. Lewes Bowles Caſe. 27 H.6. tit. aid. Statham. 29 E. 3. 1. b.

27 H.6.tit. aid. 29 E.3.1. b.

Sect. 33.

¶ Item ſi tenemẽts ſont dones a un home, & a ſes heires que il engendra de corps la feme, en ceſt cas la feme nad ryen en les tenements, & le baron eſt ſeiſie come Donee en ſpeciall tail. Et en ceo cas, ſi la feme deby ſans iſſue de ſon corps engendres per ſon baron, donques le baron eſt tenant en taile apres poſſibility Diſſue extinct.

ALſo if tenements be given to a man and to his heirs, which he ſhall beget on the body of his Wife; In this caſe the Wife hath nothing in the Tenements, and the Husband is ſeiſed as Donee in ſpecial tail. And in this caſe, if the Wife die without iſſue of her body begotten by her husband, then the Husband is Tenant in tail, after poſſibility of iſſue extinct.

¶ *Si la feme devie ſans iſſue.* So as the eſtate of this tenancy muſt be altered by the act of God, and that by dying without iſſue; for if a feoffment in Fee be made to the uſe of man and his wife for tearm of their lives, and after to the uſe of their next iſſue male to be begotten in tail, and after to the uſe of the Husband and Wife, and of the heirs of their two bodies begotten, they having no iſſue male at that time; In this caſe the husband and wife are Tenants in ſpecial tail executed; and after they have iſſue a ſon in this caſe, they are become tenants for life, the remainder to the Son in taile, the remainder to them in ſpecial taile, for albeit their Eſtate

Lewes Bowles Caſe, lib.11. fol. 80.

tail is turned to an Eſtate for life; yet they have but a bare Eſtate for life: but if the iſſue die, and the Husband die having no other iſſue, and then the Son die without iſſue, the Wife ſhall have the privileges belonging to a Tenant in tail after poſſibility of iſſue extinct, as it appeareth in Lewis Bowles Caſe ubi ſupra, where it is ſaid, that the ſtate of this Tenant muſt be created by the act of God, and not by limitation of the party, ex diſpoſitione Legis, and non ex proviſione hominis (d) If Land be given to a man and to his wife, and to the heirs of their two bodies, and after they are divorced cauſa præcontractus or conſanguinitatis, or affinitatis, their eſtates of inheritance is turned to a joint Eſtate for life. And albeit they had once an inheritance in them; yet for that the Eſtate is altered by their own act, and not by the act

(d) 7 H 4. 16. 8 E. 1. Aſſ. p. 415. 12. Aſſ.22,19. Aſſ. 2. 13 E. 3. Aſſ.91. in fine.

of

of God, viz. by the death of either party without iſſue, they are not Tenants in tail after poſſibility of iſſue extinct. Lands are given to the husband and wife, and to the heirs of the body of the husband, the remainder to the husband and wife, and to the heirs of their two bodies begotten; the husband die without iſſue, the wife ſhall not be Tenant in tail after poſſibility, for the remainder in ſpecial tail was utterly void, for that it could never take effect: for ſo long as the husband ſhould have iſſue, it ſhould inherit by force of the general tail: and if the husband die without iſſue, then the ſpecial eſtate tail cannot take effect, in as much as the iſſue which ſhould inherit the ſpecial, muſt be begotten by the husband, and ſo the general, which is larger and greater, hath fruſtrated the ſpecial, which is leſſer. And the wife, in that caſe, ſhould be puniſhed for waſte.

Sect. 34.

¶ If Lands be given to a man with a woman in frank-marriage, albeit the woman (which was the cauſe of the gift) dieth without iſſue, yet the husband ſhall be tenant in in tail, apres poſſibility, &c. for that he and his wife were Donees in eſpeciall tail, & ſo within the words of Littleton. The reſidue of this Section is evident.

¶ ET nota, q̃ nul poit eſtre tẽt en le taile aps poſſibility diſſue extinct, forſq̃ un des donees, ou le Donee en le ſpecial tail. Car l' donée en general tail ne poit eſtõ unq̃ dit tẽt en tail aps poſſibility diſſue extinct, p̃ ceo q̃ touts tẽps durant ſa vie, il poit per poſſibility aver iſſue que poit inheriter per force de meſme le tail. Et iſſint en ẽm le maſt, liſſue q̃ eſt heire a les donées en un ſpecial tail, ne poit eſtõ dit tenit en tail aps poſſibility diſſue extinct, cauſa qua ſupra.

AND note, that none can be tenant in tail after poſſibility of iſſue extinct, or Donee in eſpeciall tail: For the Donee in generall tail cannot be ſaid to be Tenant in tail after poſſibility of iſſue extinct; becauſe alwayes during his life, he may by poſſibility have iſſue, which may inherit by force of the ſame entail. And ſo in the ſame manner the iſſue which is heir to the Donees in eſpeciall tail, cannot be Tenant in tail after poſſibility of iſſue extinct, for the reaſon aforeſaid.

* This & that which follows, is not in the firſt Edition (which I have.) And therefore that I may ſpeak it once for all) it was wrong to the Author to adde any thing, eſpecially in one contexr to his worth.

* Et nota, que tenant en tail apres poſſibility diſſue extinct ne ſerra unq̃ puny de waſt, pur lenheritance que fuit un foits en luy, 10 H. 6. 1. Mes teſtuy en le reverſion poit entrer ſil alien en fee, 45 E. 3. 22.

And note, that Tenant in tail after poſſibility of iſſue extinct, ſhall not be puniſhed of waſte, for the inheritance that once was in him, 10 H. 6. 1. But he in the reverſion may enter, if he alien in Fee, 45 E. 3. 22.

CHAP.

CHAP. 4. *Sect.* 35.

Curteſie Dengleterre.

¶ TEnant p la Curteſie Dengletre eſt, lou home prent feme ſeiſie en Fee ſimple, ou en fee tail general, ou ſeiſie come heire de le taile ſpecial, & ad iſſue per meſme la feme male ou female, oyes ou vife, ſoit liſſue ayes mort ou en vie, ſi la feme devie, le baron tiendra la terre durant ſa vie, per la ley Dengleterre. Et eſt appel tenant per le Curteſie Dengleterre, pur ceo que ceo eſt uſe en nul auter realm, forſque tantſolement en Engleterre.

Et alcuns ont dit, que il ne ſerra tenant per le Curteſie, ſi non q̄ lenfant quil ad p̄ ſa feme ſoit oye crie, car per le crie eſt p̄ve q̄ le enfant fuit nee vife: Ideo Quære.

TEnant by the Curteſie of *England* is where a man taketh a wife ſeiſed in Fee ſimple, or in Fee tail general, or ſeiſed as heir in tail eſpecial, and hath iſſue by the ſame wife, male or female born alive, albeit the iſſue after dieth or liveth yet if the wife dies, the husband ſhall hold the Land during his life by the Law of *England*. And he is called Tenant by the Curteſie of *England*, becauſe this is uſed in no other Realm but in *England* only.

And ſome have ſaid, that he ſhall not be Tenant by the Curteſie, unleſs the child which he hath by his wife be heard cry; for by the Cry it is proved, that the Child was born alive. Therefore Quære.

¶ *Priſt feme ſeiſie.* And firſt of what ſeiſin a man ſhall be Tenant by the Curteſie (e) There is in Law a two-fold ſeiſin, viz. a ſeiſin in Deed, and a ſeiſin in Law, whereof more ſhall be ſaid, Sect. 468. and 681. And here Littleton intendeth a ſeiſin in Deed, if it may be attained unto. (f) As if a man dieth ſeiſed of Lands in Fee ſimple or Fee tail general, and theſe Lands deſcend to his daughter, and ſhe taketh a husband and hath iſſue, and dieth before any entry, the husband ſhall not be Tenant by the Curteſie, and yet in this caſe ſhe had a ſeiſin in Law, but if the or her husband had during her life entred, ſhe ſhould have been Tenant by the Curteſie. (g) A man ſeiſed of an Advowſon or Rent in Fee, hath iſſue a daughter, who is married, and hath iſſue, and dieth ſeiſed; the wife before the Rent became due, or the Church became void, dieth, ſhe had but a ſeiſin in Law; and yet he ſhall be Tenant by the Curteſie, becauſe he could by no induſtry attain to any other ſeiſin, Et impotentia excuſat legem. But a man ſhall not be Tenant by the Curteſie of a bare right, title, uſe, or of a reverſion or remainder expectant upon any eſtate of Freehold, unleſs the particular eſtate be determined, or ended during the coverture.

(e) F. N. B. 194.

(f) 1 Mar. Dyer 95.

(g) 7 E. 3. 66. 3 H. 7. 15, 3.

At the Coronation of King R. 2. ſaith the Record, (h) Johannes Rex Caſtiliæ & Legionis, Dux Lancaſtriæ, coram dicto domino rege & conſilio ſuo comparens clamavit ut Comes Leiceſtriæ officium Seneſchalciæ Angliæ, & ut Dux Lancaſtriæ ad gerendum principalem gladium Domini Regis vocat. Curtana die coronationis ejuſdem regis, & ut Comes Lincolniæ, ad ſcindendum & ſecandum coram ipſo Domino Rege ſedente ad menſam dicto die coronationis, & quia fact' diligenti examinatione coram peritis & conſilio regis de præmiſſis ſatis conſtabat eidem conſilio, quod ad ipſum ducem tanquam tenentem per legem Angliæ poſt mortem Blanchiæ quondam uxoris ſuæ pertinuit officia prædict. prout ſuperius clamabat exercere, conſideratum fuit per ipſum regem & conſilium ſuum prædictum, quod idem Dux officia prædicta per ſe & ſufficientes deputatos ſuos faceret & exerceret, & feoda debita in hac

(h) Proceſſ. fact. ad Coronationem R. 2. Anno regni ſui primo Rot. claus. m 45.

hac parte obtineret, Qui quidem Dux officium Seneſchalciæ prædict. perſonaliter adimplevit, &c. And every man that claimeth to hold by Grand Serjeanty to do any ſervice to the King at his Coronation, exhibited his petition to the ſaid Duke as Steward of England, who upon hearing the proofs either allowed or diſallowed the ſame.

Rot. Patent. Ann. 20 H.6.

In Letters Patents made by K. H. 6. to Richard Earl of Salisbury, you ſhall find this clauſe, Quod chariſſimus conſanguineus noſter Richardus nunc comes Sarum, qui Aliciam filiam & hæredem Thomæ nuper comitis Sarum adhuc ſuperſtitem duxit in uxorem, & cum eadem Alicia prolem tempore mortis prædict' Thomæ habuit & habet ſuperſtitem de præſenti, eoque prætextu idem Richardus nunc comes Sarum nomen, ſtatum, & honorem comitis Sarum, &c. habet, & pro tempore vitæ ſuæ de jure prætextu præmiſſorum habere debet. The name of the iſſue which the ſaid Richard Earl of Saliſbury had by the ſaid Alice was Richard, who married with Anne the ſiſter and heir of Henry Beauchamp Earl of Warwick, who was Earl of Warwick, to him and to his heirs, and Duke of Warwick to him and to the heirs males of his body. And Richard the ſon having then no iſſue by his wife, King H. 6. in the 27. year of his reign granted to him that he ſhould be Earl of Warwick, Licet ipſa & prædicta Anna exitum inter eos ad præſens non haberet. Theſe and many more I have read concerning this matter, and only ſay to the Reader, Utere tuo judicio; nihil enim impedio.

Rot. Patent. de Ann. 27 H.6. m.

(1) Vide 1 E.3.6. 5 E.3.26.

(1) If an eſtate of Freehold in Seigniories, Rents, Commons, or ſuch like be ſuſpended, a man ſhall not be Tenant by the Curteſie; but if the ſuſpenſion be but for years, he ſhall be Tenant by the Curteſie. As if a Tenant make a Leaſe for life of the Tenancy to the Seigniories, who taketh a Husband, and hath iſſue, the wife dieth, he ſhall not be Tenant by the Curteſie; but if the Leaſe had been made but for years, he ſhall be Tenant by the Curteſie.

¶ *En Fee ſimple ou en Fee taile general, ou ſeiſie come heire de la taile ſpeciall & ad iſſue per la feme male ou female.* Secondly, of what eſtate. If Lands be given to a woman, and to the heirs males of her body, ſhe taketh a Husband, and hath iſſue a daughter, and dieth, he ſhall not be Tenant by the Curteſie, becauſe the daughter by no poſſibility could inherit the mothers eſtate in the Land; and therefore where Littleton ſaith, iſſue by his wife male or female; it is to be underſtood, which by poſſibility may inherit as heir to her mother of ſuch eſtate. Littleton himſelf explaineth this by expreſs words. Cap. Dower fol. 10. ſect. 52. And therefore if a woman, tenant in tail general, maketh a Feoffment in Fee, and taketh back an eſtate in Fee; and take a Husband, and hath iſſue, and the wife dieth, the iſſue may in a Formedon recover the Land againſt his father, becauſe he is to recover by force of the eſtate Tail as heir to his Mother, and is not inheritable to his Father.

W. 2. cap.1. Litt. cap. Dower fol.10. ſect.52. Paines caſe, lib.8. fol.34.

¶ *Et ad iſſue.* 3. The time of having the iſſue. 4. What kind of iſſue. If a man ſeiſed of Lands in Fee hath iſſue a daughter, who taketh Husband and hath iſſue, the Father dieth, the Husband enter, he (a) ſhall be Tenant by the Curteſie, albeit the iſſue was had before the wife was ſeiſed. And ſo it is, albeit the iſſue had died in the life time of her Father, before any deſcent of the Land, yet ſhall he be Tenant by the Curteſie. If a woman (b) ſeiſed of Lands in Fee, taketh Husband, and by him is big with child, and in her travell dieth, and the child is ripped out of her body alive, yet ſhall he not be Tenant by the Curteſie, becauſe the child was not born during the marriage, nor in the life time of the wife, but in the mean time the Land deſcended, and in pleading he muſt allege, That he had iſſue during the marriage.

(a) Old Tenures 21 H.3. tit. Dower 198.
(b) Vide Paines Caſe, ubi ſupra.

If the wife be (c) delivered of a Monſter, which hath not the ſhape of mankind, this is no iſſue in the Law. but although the iſſue hath ſome deformity in any part of his body, yet if he hath humane ſhape, this ſufficeth. Hi qui contra formam humani generis converſo more procreantur (ut ſi mulier monſtroſum vel prodigioſum fuerit enixa) inter liberos non computentur, partus tamen cui natura aliquantulum ampliaverit vel diminuerit non tamen ſuperabundanter, ut ſi ſex digitos vel niſi quatuor habuerit, benè debet inter liberos commemorari. Si inutilia natura reddidit membra, ut ſi curvus fuerit aut gibboſus vel membra tortuoſa habuerit, non tamen eſt partus monſtroſus. Item puerorum alii ſunt maſculi, alii fœminæ, alii hermaphroditæ: hermaphrodita tam maſculo quam fœminæ comparatur, ſecundum prævaleſcentiam ſexus incaleſcentis.

(c) Bract. lib.3. 437. 438. Brit. cap.66, & 83. Fleta, lib.1.c.5, & lib.6.c.54.

If the iſſue be born deaf, or dumb, or both, or be born an Ideot, yet it is lawful iſſue to make the Husband Tenant by the Curteſie, and to inherit the Land.

¶ *Oyes ou vive.* If it be born alive (d) it is ſufficient, though it be not heard cry; for prædventure it may be born dumb. And this is reſolved clearly in Paines caſe, ubi ſupra. For the pleading (as hath been ſaid) is, That, during the marriage, he had iſſue by his wife; and upon that point the triall is to be had, and upon the evidence it muſt be proved, that the iſſue was alive, for mortuus exitus, non eſt exitus. ſo as the crying is but a proof that the child was born alive, and ſo is motion, ſtirring, and the like. And it is ſaid by an ancient Author, (e) that it was ordained in the reign of King H. 1. Que tout, que ſurveſquiſſent

(d) 28 H.8. 25. Dyer. Paines Caſe ubi ſupra.

(e) Mirrour cap.1. ſect.3.

ſent lour femes dount ils uſſent conceive tenuiſſent les heritages lour femes pur lour vies.

By the cuſtom of Gavelkind (f) a man may be Tenant by the Curteſie without having of any iſſue.

(f) 9 E.3.28.16 E.3. aid 129. Stat. de Conſuetudinibus Kanciæ.

¶ *Soit liſſue apres mort ou en vie.* And therefore (g) if a woman Tenant in tail general taketh a husband, and hath iſſue, which iſſue dieth, and the wife dieth without any other iſſue; yet the husband ſhall be Tenant by the Curteſie, albeit the eſtate in tail be determined, becauſe he was entitled to be Tenant Per legem Angliæ before the eſtate in tail was ſpent, and for that the land remaineth. But if a woman maketh a gift in tail, and reſerve a rent to her and to her heirs, and the Donor taketh husband, and hath iſſue, and the Donee dieth without iſſue, the wife dieth, the husband ſhall not be Tenant by the Curteſie of the rent, for that the rent newly reſerved is by the Act of God determined, and no ſtate thereof remaineth. But (h) if a man be ſeiſed in fee of a rent, and maketh a gift in tail general to a woman, ſhe taketh husband and hath iſſue, the iſſue dieth the wife dieth without iſſue he ſhall be Tenant by the Curteſie of the rent, becauſe the rent remaineth. The diverſity appeareth.

(g) 21 H.3. tit. Dower 198. Paines caſe ubi ſupra.

(h) Brook tit. per le Curteſie 86. 10 E.3.27.

¶ *Si la feme devie, le baron tiendra la terre, &c.* Four things do belong to an eſtate of Tenancy by the Curteſie, viz. Marriage; Seiſin of the wife; Iſſue, and Death of the wife. But it is not requiſite, that theſe ſhould concur all together at one time: And therefore if a man taketh a woman ſeiſed of lands in fee, and is diſſeiſed, and then hath iſſue, and the wife die, he ſhall enter and hold by the Curteſie. So if he hath iſſue, which dieth before the deſcent, as is aforeſaid.

And albeit the ſtate be not conſummate until the death of the wife, yet the ſtate hath ſuch a beginning after iſſue had in the life of the wife, as is reſpected in Law for divers purpoſes.

Firſt, after the iſſue had, he ſhall do homage alone, and is become Tenant to the Lord, and the avowry ſhall be made only upon the husband in the life of the wife, as ſhall be ſaid hereafter when we come to the apt place. Secondly, if after iſſue (i) the husband maketh a feoffment in fee, and the wife dieth, the Feoffee ſhall hold it during the life of the husband, and the heir of the wife ſhall not during his life recover it in Sur cui in vita; for it could not be a forfeiture, for that the eſtate at the time of the feoffment, was an eſtate of Tenancy by the Curteſie, initiate and not conſummate. And it is adjudged in 29 E.3. that the Tenant by the Curteſie cannot claim by a Deviſe, and waive the ſtate of his Tenancy by the Curteſie, becauſe, ſaith the Book, the Freehold commenced in him before the Deviſe for term of his life.

(i) 24 E.2. Cui in vita 13. 2 E.2. Cui in vita 26. 10 E.3. 12. Dyer 21 Eliz. 363.

29 E.3. fol.27.

¶ *Et eſt appel tenant per le Curteſie Dengleterre, pur ceo que neſt uſe en auter realm forſque tantſolement en Engleterre.*

¶ *Per le Curteſie.* In Latine Per legem Angliæ.

¶ *Tantſolement en Engleterre.* It is alſo uſed within the Realm of Scotland, and there it is called Curialitas Scotiæ. And ſo it is in the Realm of Ireland.

¶ *Et aſcuns ount dit, que il ne ſerra Tenant per le Curteſie, ſi non que lenfant que il ad per ſa feme ſoit oye cry, car per le cry eſt prove que le enfant fuit nee vife.* Our Author having delivered his own opinion before, viz. Oyes ou vife, now he ſheweth the opinions of others: for ſo it is ſaid in the (k) Statute De tenentibus per legem Angliæ: and of that opinion is Glanvil. (l) lib. 7. cap.8. Bracton lib. 5. tract. 5. cap. 30. Britton c.50. fol. 132. Fleta lib.6. cap.50. &c. But the reaſon is againſt their opinion; for by the cry it is proved, &c. ſo as it is but an evidence to prove the life of the Infant.

(k) Vet.mar.car. par.2.fo.70.
(l) Glanvil lib.7. cap.8. Bract. lib. 5. tract.5. cap.30. Britton cap.50. fol.132. Fleta lib6. cap.54.

¶ *Aſcuns ont dit.* By theſe and the like ſpeeches our Author intendeth, that the point had been controverted, but thereby except it be in this Section where formerly he delivered his opinions, as hath been ſaid he tacitely inſinuateth his own judgment which in all the reſt holdeth for good Law, and warranted by good Authority throughout his three Books, which kind of ſpeech and the like I have collected together, as appeareth by the Sections in (m) the margent.

(m) Sect.40.119.132 136, 137,138.141.145.148.156. 170.179.192.202.227.234. 269.336.339.357.400.435. 436.440.442.460.462.478. 501.503.506.522,523,524. 534.576.601.633,634.640. 642,643,644.646.658.675. 689.721.723.726.730,731. 733,734.

¶ *Ideo quære.* This Quære is not in the original edition of Littleton, and therefore to be rejected.

And ſome have ſaid, that in divers caſes a man ſhall by having of iſſue be tenant, by the Curteſie where a woman ſhall not be endowed. And therefore they ſay if lands be given to two women, and to the heirs of their two bodies begotten, and one of them take husband and have iſſue, and dieth, the inheritances being ſeveral, the husband ſhall be tenant by the Curteſie, as it is adjudged 7 E.3. and in other Books (n) this judgment is cited and allowed. But certain it is, That if land be given to two men, and to the heirs of their two bodies begotten, and the one take wife and dieth he ſhall not be endowed for no eſtate in the land is altered by that marriage. But I leave the Reader to his own opinion or rather to ſuſpend it until he come

7 E.3.6.
(n) 17 E.3.51.

to

to the proper place in the next Chapter. If lands holden of the King by Knights-Service in capite, descend to a woman, and after office found, she intrude and taketh husband and hath issue, In this case the husband shall be Tenant by the Curtesie; and yet if the heir male after office in the like case intrudeth and taketh wife, his wife shall not be endowed, for so it is provided by the Stat. of Prærog. regis cap.13. that in that case there accrue to the heir no Freehold nor Dower to the wife, which by interpretation is as much to say, that the heir shall have no Freehold as to this respect to give any Dower to his wife. If a man marry the neif of the King by licence, and hath issue by her, and after lands descend to the neif and the husband enter, the neif dieth, he shall be Tenant by the Curtesie of this land, and the King upon any office found shall not evict it from him, because by the marriage, the neif was enfranchised during the coverture. But if a free woman marry the Villain of the King by license, and lands descend to the Villain, the Villain dieth, the wife shall not be endowed; but upon an office found, the King shall have the land, for the Villain remained still a Villain to the King. A woman (n) taketh husband, and hath issue, lands descend to the wife, the husband enters, and after the wife is found an Idiot by office, the lands shall be seised by the King, for the title of the Tenancy by the Curtesie and of the King begin at one instant, and the title of the King shall be preferred. A man shall be Tenant by the curtesie of the Castle (o) which serveth for the publick defence of the Realm, but a woman shall be endowed thereof, as shall be said more at large hereafter.

Prærog. Regis, cap.13.

33 E.3. tit. Travers. 36.

(n) Pl.Com. Dame Hales case 263.

(o) Magna Charta 30 E.1. Dower 81 b. 17 H.3. Dower. Bract. lib.5. fol.46. & 314.

A man shall be Tenant by the Curtesie of a Common sans nombre, but a woman shall not be endowed thereof, because it cannot be divided. A man shall be Tenant by the Curtesie (p) of a house that is Caput Baroniæ, or Comitatus: But it appeareth by 4 H.3. Dower 180. that a woman shall not be endowed of it: For the Law respecteth Honour and Order. A man is entitled to be Tenant by the Curtesie, and maketh a feoffment in fee upon condition, and entreth for the condition broken, and then his wife dieth, he shall not be Tenant by the Curtesie, because albeit the state given by the feoffment be conditional, yet his title to be Tenant by the Curtesie was inclusively absolutely extinct by the feoffment, for the condition was not annexed to it; As if the Lord disseise the Tenant, and maketh a feoffment in fee of the land upon condition, and entreth for the condition broken; yet the Seignory is extinct, for that was inclusively extinct by the feoffment. See more of Tenant by Curtesie, Sect. 52.

(p) 4 H.3. Dower 180. Bract. fol.93. Fleta lib.5. cap.23. 2 E.2. Dower 123. 3 E.3. Dower B. 102. 9 Hen.1. 30 E.3.

CHAP. 5. *Sect.* 36.

Dower.

¶ *Tenant en Dower:* Tenens in dote. Dos, Dower in the Common Law (q) is taken for that portion of Lands or Tenements which the wife hath for terme of her Life of the Lands or Tenements of her Husbands after his decease for the sustenance of her self, and the nurture and education of her Children. Propter onus matrimonii & ad sustentationem uxoris & educationem liberorum eum fuerint procreati, si vir præmoriatur: & hoc propriè dicitur Dos mulieris secundum consuetudinem Anglicanam. And Dos is derived ex donatione, & est

(q) Lib. rub. cap.76. Glanvil. lib.6. cap.1. Bract. lib.2. fol.92. Brit. cap.101. Fleta lib.5. cap.22.

¶ Tenant en Dower est lou home est seisie de certaine terres ou Tenements en fee simple, tail generall, ou come heire de le taile special, & prent feme, & devie, la feme apres le decesse de la baron serra endow de la tierce part de tiels terres & tenements que fueront a la Baron en ascun temps du-

¶ Tenant in Dower is where a man is seised of certain lands or tenements in Fee simple, Fee tail general, or as heir in Special tail, and taketh a wife, & dieth, the wife after the decease of her husband shal be endowed of the third part of such lands and tenements as were her husbands at anytime during the coverture

rant

rant le coverture, a aver a tener a meſme la feme en ſeveraltie per metes & bounds pur terme de ſa vie, le quel el avoit iſſue per ſa baron ou nemy, & de quel age que la feme ſoit, iſſint que el paſſe lage de neuf ans al temps de le mort ſa baron, car il covient que el ſoit paſſe lage de neuf ans al temps del mort ſa baron, ou autrement el ne ſerra my endow.

To have and to hold to the ſame wife in ſeveralty by metes and bounds for terme of her life whether ſhe hath iſſue by her huſband or no, and of what age ſoever the Wife be, ſo as ſhe be paſt the age of nine years at the time of the death of her Huſband, for ſhe muſt be above nine years old, at the time of the deceaſe of her Husband, otherwiſe ſhe ſhall not be endowed.

quaſi donarium, becauſe either the Law it ſelf doth (without any gift) or the Husband himſelf giveth it to her, as ſhall be ſaid hereafter. And at this day Dos or Dower is not taken by the profeſſors of the Common Law, either for the Land which the wife bringeth with her in marriage to her Husband, for then it is either called in Frank-marriage or in marriage, as hath been ſaid. nor for the portion of Money or other goods or chatels which ſhe bringeth with her in marriage, for that is called her marriage Portion. And yet of ancient time (r) Dos mulieris, the Dower or Dowry of the woman was alſo applyed to them. But it is commonly taken for her third part which ſhe hath of her Husbands Lands or Tenements.

(r) Britton, cap.101. Bracton, lib.2. fol. 92. Glanvil, lib.6. c.1. lib.7. ca. 1. lib.2. fol.93. Binghams Caſe. 4 H. 3. Dower 179.

In Domeſday, Dos is called Maritagium.

To the confirmation of this Dower three things are neceſſary, viz. Marriage, Seiſin, and the death of her Husband.

Dos (ſ) the very name doth import a freedom, for the Law doth give her therewith many freedoms: Secundum conſuetudinem regni mulieres viduæ, &c. debent eſſe quietæ de tallagiis, &c. And Tenant in Dower ſhall not be diſtrained for the debt due to the King by the Husband in his life-time in the Lands which ſhe held in Dower. And other priviledges ſhe hath; Of all which Ockam yields the reaſon, Doti ejus parcatur quia præmium pudoris eſt.

(ſ) Clauſ. 11 H.3. nu.17. Regiſt. 142, 143. F. N. B. 150. Ockam fol. 40.

¶ *Lou home.* If the Husband be an alien (t) that wife ſhall not be endowed. So if the Husband be the Kings Villain, the wife ſhall not be endowed (as hath been ſaid), but if the Husband be a Villain to a common perſon, the wife ſhall be endowed if ſhe be intitled to Dower before the entry of the Lord. And ſo if a free man take a Neife to wife and dieth, ſhe ſhall be endowed. The wife of an Idiot, non compos mentis, outlawed or attainted of Felony or Treſpaſs, attainted of Herely, Præmunire, or the like, ſhall be endowed. But if the Husband be attainted of Treaſon, albeit it be Treaſon done after the rule of Dower, ſhe ſhall not be endowed, as ſhall be ſaid hereafter.

(t) Bract. fol.298. 19 E. 2. Dower 171. Dame Hales Caſe. 15 E.3. Dower. Statham. 13 E.1. tit. Dower.

¶ *Seiſie.* Here this word (ſeiſed) extendeth it ſelf as well to a ſeiſin in Law, or a civil ſeiſin, as to a ſeiſin in Deed, which is a natural ſeiſin; but ſeiſed he muſt be either the one way or the other during the Coverture. For a woman ſhall be endowed of a ſeiſin in Law. As where Lands and Tenements deſcend to the Husband, before entry, he hath but a ſeiſin in Law and yet the wife ſhall be endowed, albeit it be not reduced to an actual poſſeſſion, for it lieth not in the power of the wife to bring it to be an actual ſeiſin, as the Husband may do of his Wifes Land when ſhe is to be Tenant by Curteſy, which is worthy the obſervation. And yet of every ſeiſin in Law, or actual ſeiſin of Lands or Tenements, a woman ſhall not be endowed. For example. If there be Grandfather, father, and ſon, and the Grandfather is ſeiſed of three acres of Lands in fee, and taketh Wife and dieth, this Land deſcendeth to the father, who dieth either before or after entry, now is the Wife of the father dowable. The father dieth and the wife of the Grandfather is endowed of one acre and dieth, the wife of the father ſhall be endowed only of the two acres reſidue for the Dower of the Grandmother is paramount the title of the Wife of the father, and the ſeiſin of the father which deſcended to him (be it in Law or actual) is defeated, and now upon the matter the father had but a reverſion expectant upon a freehold, and in that caſe, Dos de dote peti non debet; although the Wife of the Grandfather dieth living the Fathers Wife. And here note a diverſity (w) between a Deſcent and a Purchaſe. For in the caſe aforeſaid if the Grandfather had infeoffed the father, or made a gift in tail unto him, there in the caſe abovеſaid, the Wife of the father, after the deceaſe of the Grandfathers Wife ſhould have been endowed of that part aſſigned to the Grandmother, and the reaſon of this diverſity is, for that

(u) 43 E.3.32. 45 E.3.13. 9 E.3.4. F.N.B. 149. 8 E.3. tit. Anſ. 393. 19 E.2. Dower 170. 23 E.3. Dower 30.

(w) 5 E. 3. tit. Voucher 249. Paris Caſe, 9 E.3.4.

the ſeiſin that deſcended after the deceaſe of the Grandfather to the Father is avoided by the endowment of the Grandmother, whoſe title was conſummate by the death of the Grandfather. But in the caſe of the Purchaſe or Gift that took effect in the life of the Grandfather (before the Title of Dower of the Grandmother was conſummate) is not defeated but onely quoad the Grandmother, and in that caſe there ſhall be Dos de dote. And yet there is another diverſity (x) where the wife of the Father is firſt endowed, and where the wife of the Grandfather, for in the ſame caſe after the deceaſe of the Grandfather and Father the Son entreth and endoweth his Mother of a third part, againſt whom the Grandmother recovereth a third part and dieth, the Mother ſhall enter again into the Land recovered by the Grandmother, becauſe ſhe had in it an Eſtate for term of her life, and the Eſtate for the life of the Grandmother is leſſer in the eye of Law, as to her, than her own life. Alſo the Husband (y) may be ſeiſed in his Demeſn, as of a Fee abſolutely, yet the woman ſhall not be endowed, as ſhe ſhall not be endowed both of the Land given in exchange, and of the Land taken in exchange, and yet the Husband was ſeiſed of both, but ſhe may have her election to be endowed of which ſhe will.

(x) 8 E.3. tit. Aſſ. 393. 13 R.2. Dower 55. 22 E. 3. 5. 3 E.3.3. 7 H. 6. 4.

(y) 6 E.3.50. F.N.B. 149.

Alſo of a ſeiſin for an inſtant a woman ſhall not be endowed. As if Ceſtuy que uſe (z) after the ſtatute of 1 R. 3. and before the ſtatute of 27 H. 8. had made a feoffment in fee, his wife ſhould not be endowed.

(z) 27 H.8.23. F.N.B. 17 H.3. Dower 192.

Likewiſe if two Joyntenants be in Fee, and the one maketh a feoffment in fee, his wife ſhall not be endowed. And ſo if the Conuſee of a fine doth grant and render the Land to the Conuſor, the wife of the Conuſee ſhall not be endowed; for it is not poſſible that the Husband could have endowed his wife of ſuch an Eſtate as the uſual pleading is, Lib. intr. 225. Quia dicit quod W. quondam vir ſuus nunquam fuit ſeiſitus de tenementis prædictis de tali ſtatu, ita quod eandem A. inde dotaſſe potuit.

Vide Sect. 242.

¶ *Des terres ou tenements.* Of a Caſtle that is maintained for the neceſſary defence of the Realm a woman ſhall not be endowed, becauſe it ought not to be divided, and the publick ſhall be preferred before the private. But of a Caſtle that is only maintained for the private uſe and habitation of the owner, a woman ſhall be endowed. And ſo it was adjudged in the Court of (a) Common Pleas, where in a Writ of Dower the demand was, De tertia parte Caſtri de Hilderker in Comitatu Northamt. And the ſtatute of Magna Charta c. 7. whereby it is provided, niſi domus illa ſit Caſtrum, is to be underſtood, a Caſtle maintained for the neceſſary and publick defence of the Realm. And this agreeth with ancient Records, (b) (albeit in the argument of the ſaid caſe they were not vouched) the effects whereof be, Non debent mulieribus aſſignari in dotem caſtra quæ fuerunt virorum ſuorum, & que de guerra exiſtunt, vel etiam homagia & ſervicia aliquorum de guerra exiſtunt. Wherein it is to be obſerved, That the Law is not ſatisfied with the names of things, or nominatives; but with things real and ſubſtantial. But of the principal Manſion or capital Meſſuage, the wife ſhall be endowed, (c) ſi non ſit caput Comitatus, five Baroniæ, for the honour of the Realm, or (as hath been ſaid) a Caſtle for the publick defence of the Realm. And ſo are the old Books to be intended, as it was reſolved Tr. 17 Eliz. in the Court of Common Pleas, which I heard and obſerved. And of an eſtate tail in Lands determined, a woman ſhall be endowed in the like manner and form as a man ſhall be Tenant by the Curteſy, mutatis mutandis.

(a) Paſc. 23 Eliz. in Com. Banco Bract. fo. 96. Brit. ca. 103. Flet. l. 5. c. 23. 30 E.1. tit. Dower 81. b. 30 E.1. Vouch. 298. 17 H.3. 192. 8 H.3. Dower 196. 8 H.3. ibid. 191.

(b) Pat. 1 E.1. part 1. m. 17. Lich. 4 E.1. nu. 88.

(c) Bract. l 2. c. 93. Brit. c. 103. Fleta, lib. 5. c. 22. Trin. 17. Pl. in Com. Banco.

¶ *En Fee ſimple, Fee taile general, &c.* If a man be Tenant in Fee tail general, (d) and make a feoffment in fee, and taketh back an Eſtate to him and to his wife, and to the heirs of their two bodies, and they have iſſue, and the wife dieth, the Husband taketh another wife, and dieth, the wife ſhall not be endowed, for during the Coverture he was ſeiſed of an Eſtate tail ſpeciall, and yet the iſſue which the ſecond wife may have, by poſſibility may inherit.

(d) 41 E.3.30. 44 E. 3.26. 30 H.8. Dyer 41.

The ſame Law it is, if in this caſe he had taken back an Eſtate in Fee ſimple, and after had taken wife, and had iſſue by her; yet ſhe ſhall not be endowed, for that the Fee ſimple is baniſhed by the remitter, and her iſſue hath the Land by force of the entail. But in that caſe the Tenant cannot plead, that the Husband was never ſeiſed of ſuch an Eſtate whereof the Demandant might be endowed, but he muſt plead the ſpecial matter.

30 H.8. Dyer 41.

¶ *Et prent feme.* If a man ſo ſeiſed as is aforeſaid, taketh an Alien to wife, and dieth, ſhe ſhall not be endowed: but if the King take an Alien born and dieth, ſhe ſhall be endowed by the Law of the Crown. And Edmond the brother of King Edward the firſt, married the Queen of Navarre, and died, and it was reſolved (e) by all the Judges, that ſhe ſhould be endowed of the third part of all the Lands whereof her Husband was ſeiſed in fee.

(e) Rot. Parl. 26 E.1. Rot.1.

If a Jew born in England taketh to wife a Jew born alſo in England the Husband is converted to the Chriſtian Faith, purchaſeth Lands, and infeoffeth another, and dieth, the wife

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brought a Writ of Dower, and was barred of Dower, and the Reaſon yielded in the Record (f) is this. Quia verò contra Juſtitiam eſt, quod ipſa dotem petat vel habeat de Tenemento quod fuit viri ſui ex quo in converſione ſua noluit cum eo adhærere & cum eo converſ. (f) Dorſ. clauſ. 18 H.3. m. 17.

¶ *De l tierce part de tiels Terres & Tenements per ſeveraltie per metes & bounds.* Albeit of many inheritances that be entire, whereof no diviſion can be made by metes and bounds a woman cannot be endowed of the tying it ſelf yet a woman (g) ſhalbe endowed thereof in a ſpecial and certain manner. As of a Mill a woman ſhall not be endowed by Meres and Bounds, nor in common with the heir, but rather ſhe may be endowed of the third toll dith or de integro molendino per quemlibet 3. menſem. And ſo of a Millein, (h) either the third payes work, or every third week or moneth. A woman ſhall be endowed of the third part of the profit of ſtallage, of the third part of the profits of a Fair, of the third part of the profits of the office of the Marſhalſey, of the (i) third part of the profits of the keeping of a Park, of the third part of the profit of a Dove-houſe, and likewiſe of the third part of a Piſcary, (k) viz. tertium piſcem, vel jactum retis tertium. Of the third preſentation to an Advowſon. A writ of Dower lieth de 3. parte exituum provenientium de cuſtodia gaolæ Abathiæ Weſtm. And herewith agreeth reverend antiquity. De (l) nullo quod eſt ſua natura indiviſibile & ſecationem ſive diviſionem non patitur nullam partem habebit, ſed ſatisfaciat ei ad valentiam. Of the third part of profits of Courts, (m) fines, heriots, &c. Alſo a woman ſhall be endowed of tithes. And the ſureſt endowment of tithes is of the third ſheaf, for what land ſhall be ſown is uncertain.

(g) Bract. lib. 2. fol. 97. b. 23 H.3. tit. Aſſ. 435. F.N.B. 149. 45 E.3. Dower 50.
(h) 2 H.6. 11. Bract. lib. 2. fol. 97. Britt. 247. 11 E.3. tit. Dower 85. 15 E.3. ibid. 82. 2 E.3. 57. F.N.B. 8. k.
(i) 4 E.2. Tr. 233. 26 E.3. 58. 45 E.3. Dower 50.
(k) Bract. 98. 208. Brit. 247. Flet. lib. 5. ca. 23. 17 E.2. Dower 104. 163. 19 E.3. Quar. Imp. 134. 7 E.3. 7.
(l) Bract. 57. Brit. 146. 147.
(m) Lib. Intr. Judgm. 18. fol. 230. Lib. 11. fol. 25, 26. Harpers caſe.

But in ſome caſes of lands and tenements which are diviſible, and which the heir of the husband ſhall inherit yet the wife ſhall not be endowed. As if the husband (n) maketh a leaſe for life of certain lands, reſerving a rent to him and his heirs, and he taketh wife and dieth, the wife ſhall not be endowed neither of the reverſion (albeit it is within theſe words Tenements) becauſe there was no ſeiſin in Deed or in Law, of the Freehold nor of the Rent, becauſe the husband had but a particular eſtate therein and no Fee ſimple. But if the husband make a leaſe for years, reſerving a rent and taketh wife, the husband dieth, the wife ſhall be endowed of the third part of the reverſion by metes and bounds, together with the third part of the rent, and execution ſhall not ceaſe during the years. And herewith agreeth the common experience at this day. But if the husband maketh a gift in tail, reſerving a rent to him and to his heirs, and after the Donor taketh wife and dieth, the wife ſhall be endowed of this rent, becauſe it is a rent in fee, and by poſſibility may continue for ever.

(n) 28. Aſſ. 3. 8 R.2. Dower 184. 1 E. 6. Dow. B. 89. acc.
Vid. 1 E.6. B. 89.

Of a Common certain a woman ſhall be endowed, but of a Common fauns nomber en groſſe ſhe ſhall not be endowed, as hath been ſaid before. And ſo of a Rent ſervice, Rent charge, and Rent ſeck ſhe ſhall be endowed: but of an annuity that chargeth only the perſon, and iſſueth not out of any lands or tenements, ſhe ſhall not be endowed. But if the Freehold of the Rents, Common, &c. were ſuſpended before the Coverture, and ſo continue during the Coverture, ſhe ſhall not be endowed of them. If after the Coverture the husband doth extinguiſh them by releaſe or otherwiſe, yet ſhe ſhall be endowed of them; for as to her Dower they in the eye of the Law habe continuance.

Lib. 7. fol. 38. Billingſtons caſe Lib. 6. fo. 78. Seig. Aburgavie's caſe.

If the Wife be entituled to have Dower of three Acres of Marſh, every one of the value of twelve pence, the Heir by his induſtry and charge maketh it good Meadow, every Acre of the value of ten ſhillings, the wife ſhall have her Dower according to the improved value, and not according to the value as it was in her husbands time: for her title is to the quantity of the land, viz. one juſt third part.

And the like Law it is, if the Heir improve the value of the Land by building: And on the other ſide, if the value be impaired in the time of the Heir, ſhe ſhall be endowed according to the value at the time of the aſſignment, and not according to the value as it was in the time of her husband.

V 30 E.1. Vouch. 238.

¶ *Aſcuns temps durant le coverture.* For the better underſtanding whereof it is to be known, that (as hath been ſaid) to Dower three things do belong, viz. Marriage, Seiſin and the death of the Husband. Concerning the Seiſin, it is not neceſſary that the ſame ſhould continue during the Coverture, for albeit the husband alieneth the lands or tenements, or extinguiſheth the rents or commons, &c. yet the woman ſhall be endowed. But it is neceſſary that the marriage do continue, for if that be diſſolved, the dower ceaſeth, ubi nullum Matrimonium, ibi nulla dos. But this is to be underſtood when the husband and wife are divorced à vinculo matrimonii as in caſe of precontract, conſanguinity, affinity, &c. and not à menſa & thoro only, as for adultery. And yet it is ſaid, that if the aſſignment of Dower Ad oſtium Eccleſiæ be ſpecified, viz. That notwithſtanding any ſhall happen, yet that ſhe ſhall hold it for her life, that this is good.

Bract. 92. Brit. cap. 101. Brit. cap. eodem.

If the Wife elope (o) from her husband, that is, if the Wife leave her husband, & goeth away and tarrieth with her adulterer, ſhe ſhall loſe her Dower until her husband willingly with-

(o) W.2. cap. 34. Lib. Intr. 224. Fleta lib. 5. c. 22. Br. c. 109. Mirror ca. 5. ſect. 5.

out coertion eccleſiaſtical be reconciled unto her, and permit her to cohabit with him, all which is comprehended ſhortly in two Hexameters, Sponte virum mulier fugiens, & adultera facta, Dote ſua careat, niſi ſponſi ſponte retracta. And (p) if ſhe goeth willingly with or to the avowtrer, or if ſhe tarrieth with him againſt her will, or if he turn her away, or if ſhe cohabit with her huſband, by the cenſures of the Church, in all theſe caſes, ſhe loſeth her Dowry. But ſee notable matter hereof in the expoſition upon the Statute of W. 2. cap. 34.

(p) 3 E.3.2. 6 E.3.29. 9 E.3.29. 19 E.3. Dower 94. 4. E.3.19. Vid. Fitz. N. B. 150. h. 8 E.2. Dower 153.

¶ *En ſeveraltie per metes & bonds.* And yet in ſome caſes where the husband was ſole ſeiſed, the wife ſhall not be endowed in ſeveralty, by metes and bounds. As for example, (q) If a man ſeiſed of lands in Fee, took a wife, and infeoffed eight perſons, a Writ of Dower was brought againſt theſe eight perſons, and two confeſs the Action, and the other ſix plead in bar, and deſcend to iſſue, the Demandant ſhall have judgment to recover the third part of two parts of the land, in eight parts to be divided and after the iſſue being found for the Demandant againſt the ſix, the Demandant ſhall have judgment to recover againſt them the third part of ſix parts of the ſame lands, in eight parts to be divided, which is worthy the obſervation. But of this more ſhall be afterwards ſaid in this Chapter.

(q) M.2. & 3 Eliz. Dyer. 187. b. 10 Aſſ.p.2. 17 E.3.4. Tr. 10 H.5. Rot. 447.

But regularly Littletons words are to be intended, where the husband was ſole ſeiſed, for where he was ſeiſed in Common, there ſhe cannot be endowed by metes and bounds, as it appeareth in this Chapter, Sect.44. Nota, the endowment by metes and bounds, according to the common right, is more beneficial to the wife, then to be endowed againſt common right, for there ſhe ſhall hold the lands charged, in reſpect of a charge made after her title of Dower.

26 E.3. Dower 133. 10 E.3.31. 17 E.2. Dower 164. 19 E.3. Qua. Imp. 154. 22 E.4.2. 18 H.6.27. per Paſton.

¶ *Le quel el avoil iſſue per ſa baron ou nemy.* Herein the Tenant in Dower, as in many other, is preferred before the Tenant by the Courteſy: But yet this great diſadvantage the wife hath, that ſhe cannot enter into her Dower by the Common Law, but is driven to her Writ of Dower to recover the ſame, wherein ſometimes great delayes are uſed, and therefore the well adviſed friends of the wife will provide for a Joynture to be made to her, as ſhall be ſaid hereafter; For by the ſtatute of (r) Magna Carta cap.7. ſhe ſhall tarry in the chief houſe of her husband but by the ſpace of forty dayes after the death of her husband, within which time Dower ſhall be aſſigned unto her, unleſs it were formerly aſſigned, &c. but of little effect was that Act, for that no penalty was thereby provided if it were not done: which term of forty dayes is in Law called Quarentina. But if ſhe marry within the forty dayes ſhe loſeth her Quarentine. But ſome have ſaid that by the ancient Law of England the woman ſhould continue a whole year in her husbands houſe, within which time if Dower were not aſſigned, ſhe might recover it: and this certainly was the Law of England before the Conqueſt, (ſ) Mulieres viduæ bis ſenos menſes viduas exigunto, atque tum demum cui velint nubant, ſin quæ ante annum nupſerit, dote mulctata fortunis omnibus à priore marito relictis privatur. But for the relief of the widow it was provided by the ſtatute of Merton made in Anno 20 H.3. cap.1. (which by (t) Bracton is called Nova Conſtitutio) that the wife ſhall recover damages in her Writ of Dower from the time of the death of her husband. But herein divers things are obſervable. Firſt, in what kind of Writ of Dower ſhe ſhall recover no damages. In a Writ for a Dower Ad oſtium Eccleſiæ, or Ex aſſenſu patris, ſhe ſhall recover no damages, becauſe ſhe may enter, and the words of the ſtatute be, Et dotes ſuas habere non poſſunt ſine placito. Alſo I have read in an ancient and learned reading upon this ſtatute, that it extendeth onely to a Writ of Dower, Unde nihil habet, and not a Writ of right of Dower, for in no Writ of right damages are to be recovered. 2. She ſhall recover damages only when her husband dy ſeiſed, (that is) ſeiſed of the Freehold and Inheritance, (u) for albeit the husband before the title of Dower had made a Leaſe for years reſerving a Rent, the wife ſhall recover the third part of the reverſion with a third part of the Rent and damages, for the words of the ſtatute be, De quibus viri ſui obierunt ſeiſiti. 3. Some ſay that the Demandant in a Writ of Dower, that delayeth her ſelf, ſhall not recover damages; therefore let the Demandant take heed thereof. 4. It is neceſſary for the wife after the deceaſe of her husband as ſoon as ſhe can to demand her Dower before good teſtimony, for otherwiſe ſhe may by her own default loſe the value after the deceaſe of her husband, and her damages for detaining of her Dower. For if ſhe bring a Writ of Dower againſt the Heir, and the Heir cometh into the Court upon the Summons the firſt day, and plead that he hath been alwayes ready and yet is to render Dower, &c. If the wife have not requeſted her Dower, ſhe ſhall loſe the mean values and her damages, but if ſhe hath requeſted her Dower ſhe may plead it, and iſſue may be thereupon taken.

(r) Magna Carta cap.6. Fleta lib.5. cap. 23. Bracton lib.1. fol.96. Britton cap.103. 19 H.6. 14. 6 E.6. Dyer 76. F.N.B. 161. Regiſt. orig. 175. 1 Mary Dower 101.

(ſ) Lamb. ſect.120. 71. and divers ancient Manuſcripts. See the 2 part of the Inſtitutes. cap.7.

(t) Bract. lib.4. 312. & lib.2.96. Britton cap.103. Fleta lib.5. cap.23.

(u) Regiſt. Judic. 4. Origin.173. Dyer 11 El.284. Raſt. pl. fo.226, &c. 16 E.3. tit. Damages 83. 8 E.2. ibid.11.

But it is holden in ſome Books (w) that a requeſt in pays is not ſufficient, and that it is the folly of the wife, that ſhe brought not her Writ of Dower ſooner. But the Law and many (x) Books be againſt it, and the words of the plea (that he hath been alwayes ready &c.) prove the ſame, and the words of the Statute alſo prove this. Et dotes ſuas habere non poſſunt ſine placito.

(w) 5 E.3.1. 41 E.3. Dower 46. and not in the book at large.

(x) 16 E.3. Dower 59. 2 H.4.7. 9 H.4.4. tit. iſſue 133. 11 H.4.40. 13 E.4.7. 14 H.8.25. b.

And

And the reaſon why tout temps priſt is a good plea in a writ of Dower brought againſt the heir to bar her of the mean values and damages, is becauſe the heir holdeth by title, and doth no wrong till a demand be made. And in a writ of Aiel, Couſinage, &c. where the land and damages are to be recovered, there ſuch a plea is not good, for there the tenant of the land hath no title, but holdeth the land by wrong, and the feoffee of the heir cannot at the firſt day plead tout temps priſt, becauſe he had not the land all the time, ſince the death of the Anceſtor. 5. It is to be obſerved that the mean values and damages are to be recovered againſt the tenant in a writ of Dower, as it appeareth in a notable Record (y) between Belfield and Rowſe, the Tenant as to a parcel pleaded Non-tenure, and for the reſtone detainment of Charters, upon which pleas they were at iſſue, and both iſſues found by the Jury againſt the tenant, and found further that the husband died ſeiſed ſuch a day and year, and had iſſue a ſon, and that the demandant and the ſon by ſix years after the deceaſe of the husband together took the profits of the land, and after the ſon ſuch a day and year died without iſſue after whoſe deceaſe the land deſcended to the Tenant as uncle and heir to him, by force whereof he entred and took the profits until the purchaſing of the original writ, and found the value of the land by the year, and aſſeſſed damages for the detaining of the Dower, and coſts, and upon this verdict, after often debating the Demandant had judgment to recover her damages for all the time from the death of the husband without any dekalcation. In which caſe many things apparant therein are obſervable. Let the Tenant therefore take heed how he plead falſe pleas. 6. That this ſtat. of Merton doth extend to Copyholds (z) where the cuſtome is, that women be dowable. 7. That if the wife hath Dower aſſigned to her in Chancery ſhe ſhall have no damages, (a) for the words of the Statute be Et viduæ per placitum recuperaverint, &c. But it is if the heir or his feoffee aſſign Dower, and the wife accepteth it, ſhe loſeth her damages.

(y) Mich. 8. & 9 Eliz. Rot. 904 in Comm. Banc.

(z) Tr. 37 Eliz. lib. 4. fo. 30. b. Shawes caſe.

(a) 43 Aſſ. Pl. 32. 14 H. 8. 28.

A man ſeiſed of lands in fee taketh a wife and granteth a Rent charge, and after maketh a feoffment in fee, and taketh back an eſtate tail and dieth, the wife recovereth Dower againſt the iſſue in Tail by reddition, the wife maketh a ſurmiſe that the husband died ſeiſed, and prayeth a writ to enquire of the damages, and that is granted to her. In this caſe ſhe holds the land charged with the Rent charge, for by her prayer ſhe accepteth her ſelf dowable of the ſecond eſtate, for of the firſt eſtate, whereof ſhe was dowable, her husband died not ſeiſed, and ſo ſhe hath concluded her ſelf, wherefore if the Rent charge be more to her detriment than the damages beneficial to her, it is good for her in that caſe to make no ſuch prayer.

¶ *De quel age que la feme ſoit, iſſint que el paſſe lage de neuf ans al temps del mort ſon baron.* Feme, wife, here Littleton ſpeaketh of a wife generally, and generally it is to be be underſtood as well of a wife de facto, as de jure. Therefore if the wife be paſt the age of nine years (b) at the time of the death of her husband ſhe ſhall be endowed of what age ſoever her husband be, albeit he were but four years old. Quia junior non poteſt dotem promerere neque virum ſuſtinere, nec obſtabit muliere perenti minor ætas viri. Wherein it is to be obſerved that albeit Conſenſus non Concubitus facit Matrimonium, and that a woman cannot conſent before 12. nor a man before 14. yet this inchoate and imperfect marriage (from the which either of the parties at the age of conſent may diſagree) after the death of the husband ſhall give Dower to the wife, and therefore it is accounted in Law after the death of the husband legitimum Matrimonium, a lawful marriage, quoad dotem. If a man taketh a wife of the age of ſeven years, and after alien his land and after the alienation the wife attaineth to the age of nine years, and after the husband dieth, the wife ſhall be endowed, for albeit ſhe was not abſolutely dowable at the time of the marriage, yet ſhe was conditionally dowable, viz. if ſhe attained to the age of nine years before the death of the husband for ſo Littleton here ſaith, ſo that ſhe paſs the age of nine years at the death of her husband, for by his death the poſſibilty of Dower is conſummate.

(b) 13 E. 1. Dower 172. Itin North. 8 E. 2. Dower 122. 7 E. 2. Dower 147. 12 E. 2. ibid. 159. 21 E. 3. 28. 15 E. 3. Dower 67. 13 R. 2. Dower 154. 12 H. 4. 3. 35 H. 6 48. 7 H. 6. 11. 12. 12 H. 4. Doct. & Stud. Fitz. N. B. 149. b. 22 Eliz. Dower 369. Bract. fol. 92. Flera lib. 5. cap. 22. Lib. Intrat. fol. 123.

And ſo it is if the husband alien his land and then the wife is attainted of Felony, now is ſhe diſabled, but if ſhe be pardoned before the death of the husband, ſhe ſhall be endowed. If the ſon endow his wife at her age of 7 years ex aſſenſu patris, if ſhe before the death of her husband attain to the age of nine years, the Dower is good, But otherwiſe it is of an originall abſolute diſability; as if a man take an Alien to wife, and after the husband alien the land, and after ſhe is made Denizen, the husband dieth, ſhe ſhall not be endowed becauſe her capacity and poſſibility to be endowed came by the Denization, otherwiſe it is if ſhe were naturalized by Act of Parliament. whereof ſee more in the Chapter of Villenage.

And the Biſhop upon an iſſue joyned in a Writ of Dower, Quod nunquam fuerit copulati legitimo Matrimonio, ought to certify that they were coupled in lawful marriage, albeit the man were under fourteen, or the wife above nine, and under twelve. So it is if a marriage de facto, be voidable by divorce, in reſpect of Conſanguinity, Affinity, Precontract, or ſuch like, whereby the marriage might have been diſſolved, and the parties freed à vinculo matrimonii, yet if the husband die before any divorce, then for that it cannot now be avoided, this wife de facto ſhall be endowed (c) for this is legitimum Matrimonium (as in the other caſe when

(c) 10 E. 3. 35. Flet. lib. 5. cap. 22. Brit. cap. 107.

when the wife is infra annos nubiles) quoad dotem. And ſo in a writ of Dower the Biſhop ought to certify, that they were legitimo Matrimonio copulati, according to the words of the Writ. And herewith agreeth 10 E.3.35. And (d) Bracton: quamdiu duravit matrimonium, duravit dotis exactio, eo deficiente deficit dotis petitio, &c. poterit tamen replicare contra exceptionem illam quod ſi aliquando fuit Matrimonium propter Conſanguinitatem, &c. inter eos accuſatum, nunquam tamen fuit in vita viri ſui ſolutum nec divortium celebratum. But if they were divorced à vinculo Matrimonii in the life of her husband, ſhe loſeth her Dower: Otherwiſe it is if they were divorced (e) Cauſa adulterii, which is but a menſa & thoro, and not à vinculo Matrimonii, as it was adjudged. But ſome do hold that a wife de facto ſhall not have an appeal of the death of her husband, but only ſhe that is a wife De jure in favorem vitæ. Vide 50 E.3. fol.15. 28 E.3.92.27. Aſſ. Stramf. Pl. Cor. 59. and that there unques accouple in loyal Matrimonie ſhall be taken de jure ſtrictly. And ſo in ſome caſe a wife ſhall have Dower where ſhe cannot have an appeal, (f) and in other Caſes ſhe ſhall have an appeal, where ſhe cannot have a Writ of Dower, as if ſhe elope, &c. ſhe is barred of her Dower, but not of her appeal: and the reaſon is for that the ſtatute (g) barreth her of her Dower, but not of her appeal. So if the huſband be attainted of treaſon, &c. his wife ſhall not be endowed, and yet if any do kill him the wife ſhall have an appeal, the reaſon of the diverſity ſhall appear hereafter in this Chapter.

(d) Bracton lib.4. fol. 304. Britton ibid. Fleta lib.5. cap.23. 32 E.1. Dyer 156.

(e) Tr. 2 Ja. Rot. 1815. in Communi Banco. Inter Stowel & Wikes in Dower.

(f) 50 E. 3. 15. b.

(g) W.2. cap.34.

¶ *Apres le mort le baron.* (h) Mortuo viro hinc confirmatur Dos. This is intended of a natural, not of a civil death. For if the husband enter into religion, (i) the wife ſhall not be endowed until he be naturally dead.

(h) Britton cap.106. Bracton lib.4. fol.301.
(i) 31 E.3. tit. Colluſion 29.

And in this Chapter Littleton diviveth Dower into five parts, viz. Dower by the common Law. Secondly Dower by the Cuſtome. Thirdly, Dower Ad oſtium Eccleſiæ. Fourthly, Dower Ex aſſenſu patris And fifthly, Dower De la pluis beale And all theſe Dowers were inſtituted for a competent livelyhood for the wife during her life. (k) Propter onus Matrimonii & ad ſuſtentationem uxoris & educationem liberorum cum fuerint procreati ſi vir præmoriatur.

(k) Bract. lib.2. cap.39. fol.92, &c. Fleta lib.5. cap.22. Britton cap.101.

Sect. 37.

¶ *Nota per le Common ley la feme navera pur ſa Dower forſque* (l) *la tierce part, &c.* This third part is called rationabilis Dos, or Dos legitima, becauſe it is the Dower that the Common Law giveth, rationabilis autem Dos eſt cujuſlibet mulieris de quocunque tenemento tertia pars omnium terrarum, & tenementorum quæ vir ſuus tenuit in dominico ſuo ut de feodo, &c.

¶ Et nota que per le common ley la feme navera pur ſa Dower forſque la tierce part des tenements que fueront a ſa Baron durant le eſpouſels, mes per cuſtome dalcun pais el avera le moietie, & per le cuſtome en alcun Ville & Burgh, el avera lentiertie. Et en touts tiels caſes, el ſerra dit tenant en dower.

And note, that by the common law, the wife ſhall have for her Dower, but the third part of the Tenements which were her husbands during the Eſpouſals, but by the cuſtome of ſome County ſhe ſhall have the half, and by the cuſtome in ſome Town or Borough, ſhe ſhal have the whole. And in all theſe Caſes ſhe ſhall be called Tenant in Dower.

(l) Glanvil lib.6. cap.1. Bracton ubi ſupra. Britton ubi ſupra. Fleta ubi ſupra. Mirror cap.1. ſect.3. Magna Charta. cap. 7.

F. N. B. 150. c.

¶ *Mes per Cuſtome daſcun pais el avera le moietie, & per le Cuſtome en aſcun Ville & Burgh el avera lentiertie.* Such a (m) cuſtome may extend to a County, City, or an ancient Burgh without queſtion, and ſo this cuſtome as here it appeareth by Littleton, may extend to upland Towns, which are neither Counties, Cities, nor Boroughs. But the ſurer pleading in this and the like Caſes, is to lay the cuſtome within a Mannor or Seigniory if the truth of the caſe will ſo bear it. By the cuſtome of Gavelkind (n) the wife ſhall be endowed of the moyety, ſo long as ſhe keep her ſelf ſole, and without child, which ſhe cannot waive and take her thirds for her life. For in that caſe, Conſuetudo tollit communem legem.

(m) 21 E. 4. 53, 54. 7 H.6.26 22 H.6.14. 21 H.7.17. 40 Aſſ.27.41. 26 E.2. Preſcription 53. 43 E.3. 32. 45 Aſſ.8. Dyer 363. 39 E.3.2.10. 14 E.3. bar. 277. 13 E.3. tit. Dower 65.

(n) Vide le ſtatute de conſuetud. Kanciæ, &c. Trin. 17 E.3. coram rege Kan. in Theſaur. in which record Sententia ſignifieth Widowhood.

And as Cuſtome may enlarge, ſo may Cuſtome abridg Dower, and reſtrain it to a fourth part, &c.

Sect.

Sect. 38.

This ſhall be explained by that which ſhall be ſaid in the two Sections next enſuing.

¶ Auxy ſont deux auters maners de dower, ceſtaſcavoir, dower que eſt appelle dowment Ad oſtium Eccleſiæ, & dower appelle dowment, Ex aſſenſu patris.

Alſo there be two other kinds of Dower, *viz.* Dower which is called Dowment at the Church door, and Dower called Dowment by the fathers aſſent.

Sect. 39.

¶ Dowment Ad oſtium Eccleſiæ, eſt lou home de plein age ſeiſie en Fee ſimple que ſerra eſpouſe a un feſts, quant il vient al huis del monaſtery ou deſglife deſtre eſpouſe, & la apres affiance enter eux fait, il endowe la feme de ſa entier terre ou de la moyetie, ou dautre meindre parcel, & la obertment declare le quantity, & la certainty de la terre que el avera pur ſa Dower, in ceo caſe la feme apres le mort le baron, poit entrer en le dit quantity de terre dont le baron luy endowa, ſans auter aſſignment de nul luy.

Dowment at the Church door, is where a man of ful age ſeiſed in Fee ſimple, who ſhall be married to a woman; and when he cometh to the Church door to be married, there, after affiance and troth plight between them, he endoweth the woman of his whole land, or of the half, or other leſſer part thereof; and there openly doth declare the quantity, and the certainty of the Land, which ſhe ſhall have for her Dower. In this caſe the wife, after the death of the husband, may enter into the ſaid quantity of land of which her husband endowed her, without other aſſignment of any.

¶ If this Dower be made Ad oſtium caſtri ſive meſuagii, it is not good, but ought to be made Ad oſtium Eccleſiæ ſive Monaſterii.

Et ſciendum eſt (o) quod hæc conſtitutio fieri debet in facie Eccleſiæ, & ad oſtium Eccleſiæ, non enim valet facta in lecto mortali, vel in camera, vel alibi ubi clandeſtina fuêre conjugia. For the Law requires, that this and like matters be done publikely and ſolemnly. 10 H. 3. Dower 200. (o) Bract. lib. 2. cap. 18. Mirrour cap. 1. ſect. 3. & cap. 5. 10 H. 3. Dower 201. F. N. B. 150. m. n. Fleta lib. 5. cap. 22, &c. Britton cap. 101. 108, &c.

¶ *Ou home de plein age*, That is, of one and twenty years, Anno 9 H. 3. Dower 197. A man of the age of eighteen years, took a wife, and by aſſent of his Guardian endowed her, Ad oſtium Eccleſiæ; and it was adjudged a good endowment, albeit the husband died before the age of one and twenty years; but I hold Littletons opinion to be good Law. 9 H. 3. Dower 197.

¶ *La apres affiance enter eux.* Affidare eſt fidem dare. Affiance or ſponſality, and is derived of this word ſpondeo, becauſe they contract themſelves together, & ideo ſponſalia dicuntur (p) futurarum nuptiarum conventio, & repromiſſio. But this Dower is ever after marriage ſolemnized, & therefore this Dower is good without deed, becauſe he cannot make a deed to his wife. For no aſſignment of Dower Ad oſtium Eccleſiæ, can be made before marriage; for that before marriage, the woman is not entituled to have Dower. (p) Glanvil lib. 6. cap. 1. 40 E. 3. 43. Vide Vernons caſe lib. 4. fol. 1, 2. (q) Glanvil lib. 6. cap. 1. Bract. lib. 2. cap. 38. 39. & lib. 4. tract. 6. cap. 1. & 6. Britton cap. 101, &c. Fleta lib. 5. cap. 22, &c.

¶ *De ſa entier terre ou de le moiety.* In ancient time, (q) as it appeareth by Glanvil

Glanvil. lib. 6. cap. 1. It was taken, that a man could not have endowed his wife Ad ostium Ecclesiæ of more than a third part but of less he might. But at this day (r) the Law is taken as Littleton here holdeth. An assignment of Dower (s) where the husband was sole seised, cannot be made of the third or fourth part in common, but ought to be in severalty.

(r) F.N.B. 150.
(s) 20 E.3. Barre 132. 45 E.3. 6. Fleta lib. 5. 23.

¶ *Et la overtment* (t) *declare le quantity & certenity del terre.* Here be two things that the Law doth delight in, viz. First to have this and the like openly and solemnly done. Secondly, to have certainty, which is the mother of quiet and repose. And this word (moyety) aboresaid is to be entended of the half in certainty, and not of the moyety in Common, which clearly (u) appeareth, in that here Littleton saith, the quantity and certainty of the land.

(t) Britton cap. 101. Bracton lib. 2. cap. 18.

(u) Vide 14 H. 3. Dower 189. 9 H. 3. Dower 289. 9 H. 3. Dower 190. 8 H. 3. Dower 195. F.N.B. 150. 40 E. 3. 43.

¶ *En ceo case le feme poet entrer en le dit quantity del terre.* And afterwards Sect. 43. he saith, Nota, que en touts cases lou le certainty appiert queux terres ou tenements feme avera pur sa dower, la feme poet enter apres la mort son baron. It was instituted, in favour and relief of wives; that a man, after marriage, might assign to his wife certainty of Dower, to the end, that the widow should not be driven to a long and chargeable suit, wherein delay might be used; and in the mean time her life spent, together with her money also. For albeit the (w) Law hath provided, Quod vidua post mortem mariti sui non det aliquid pro dote sua, & maneat in capitali messuagio mariti sui per quadraginta dies post obitum mariti sui, infra quos dies assignetur ei dos sua, nisi prius ei assignata fuerit, &c. & habeat rationabile estoverium suum interim in Communi; yet because there was no penalty or punishment inflicted, the Tenant of the land may drive her to sue for her Dower. And this continuance of the widow in the capital Messuage, is in Law, called a Quarentine, Quarentina, for that it is by the space of fourty dayes, as is aforesaid. And if the Heir, or other Tenant of the land put her out, she may have her Writ, de quarentina habenda. If the Wife marry within the fourty dayes, she loseth her Quarentine; for her habitation in the house is personal to her, and only given to her in judgment of Law during her widdowhood, albeit the words of the Law be general. And therefore to the end, that Widows might have certainty of estate, and that they might enter, and not be driven to suit, the Law hath provided Dower Ad ostium Ecclesiæ, and as it shall appear hereafter, Dower Ex assensu patris. And lastly, by making of a Joynture, of which (being no Dower, but made in satisfaction of Dower either before or after marriage) it is necessary that something should be said hereafter in his apt place, for that this now falleth out to be the surest way.

(w) Magna Charta cap. 7. See the second part of the Institutes cap. 7. Fleta lib. 5. cap. 23. Britton cap. 103. Bract. lib. 2. cap. 40. Regist. 175. Vide Dyer 6 E. 6. 76. b. & 161. a. F.N.B. 161. 1 Mar. Br. 101.

Nota; The surest way.

¶ *En touts cases quant le certeinty appiert, &c. la feme poet enter apres le mort del baron.* This is to be intended, where the certainty appeareth upon an assignment of Dower, Ad ostium Ecclesiæ, or Ex assensu patris. for if a Woman bring a Writ of Dower of six pound Rent charge, and she hath judgment to recover the third part; albeit it be certain that she shall have fourty shillings, yet she cannot (x) distrain for fourty shillings, before the Sheriff do deliver the same unto her: for whersoever the Writ demands land, rent, or other things in certain, the Demandant after judgment may enter or distrain before any seisin delivered to him by the Sheriff upon a Writ of Habere facias seisinam. But in Dower, where the Writ demandeth nothing in certain; there the Demandant, after the judgment, cannot enter or distrain until execution sued, by which execution, the Sheriff is by the Kings Writ to deliver the third part in certainty, to the Demandant. And so it is when the wife of one Tenant in common demand a third part of a moyety; yet after judgment, she cannot enter, until the Sheriff deliver to her the third part, albeit the delivery of the Sheriff shall reduce it to no more certainty than it was.

(x) 45 E. 3. 26. 48 E. 3. 36. 22. Ass. 87. 39 E. 3. 12. 37 H. 6. 38. 39 H. 6. 25. 1 H. 5. 8. Breve 199. 30 E. 3. 3. 21 E. 4 3. Vide lib. 1. Shelleys case. 40 E. 3. 22.

¶ *Sauns auter assignment de nulluy.* For as concerning Dower at the Common Law, there must be assignment either by the Sheriff, (as hath been said) by the Kings Writ, or else by the heir or other Tenant of the land, by consent and agreement between them. To a perfect assignment of Dower, eight things are to be observed: (a) First, regularly the assignment must be certain, as our Author here saith.

(a) 8 E. 2. Ent. 75. 40 E. 3. 22. 45 E. 3. 5, 6.

Secondly, It (b) must be either of some part of the Land, whereof she is dowable; or of a rent, or some other profit issuing out of the same, either before judgment or after, which rent may be assigned to her by paroll. But an assignment of other land whereof she is not dowable, or of a rent issuing out of the same is no bar of her Dower.

(b) 1 Mar. Dyer 91. 1 E. 2. Dower 146. 28 H. 6. 2. Dyer 9 El. 263. 26 Ass. 41. 21 E. 3. Scir. fa. 99. 33 H. 6. 2. Vernons case, lib. 4. fol. 1. 5 E. 4. 22.

Thirdly, The assignment must be absolute, and not conditional or subject to any limitation.

Fourthly, It must be made by him that is Tenant of the land, but herein certain diversities are to be observed.

(c) 7 H. 6. 34. 10 E. 2. Dower 169. 10 E. 3. 38.

If two or more be Joynt-tenants of lands, (c) the one of them may assign Dower to the wife,

wife of a third part in certainty, and this ſhall bind his companions: becauſe they were compellable to do the ſame by Law. But if one of them aſſign a rent out of the Land to the wife: this ſhall not bind his companion becauſe he was not compellable by the Law thereunto. If the husband make ſeveral Feofments of ſeveral parcels and dieth, and the one Feoffee aſſign Dower to the wife of parcel of Land, in ſatisfaction of all the Dower which ſhe ought to have in the land of the other Feoffees, the other Feoffees ſhall take no benefit of this aſſignment, becauſe they are ſtrangers thereunto, and cannot plead the ſame. But in that caſe, if the husband dieth ſeiſed of other lands in Fee ſimple, and the ſame deſcend to his heir, and the heir endoweth the wife of certain of thoſe lands in full ſatisfaction of all the Dower that ſhe ought to have as well in the land of the Feoffees, as in his own lands; this aſſignment is good, and the ſeveral Feoffees ſhall take advantage of it. And therefore if the wife bring a writ of Dower againſt any of them, they may vouch the heir and he may plead the aſſignment which he himſelf hath made in ſafety of himſelf, leſt they ſhould recover in value againſt him, (d) ſo as as there is a privity in this reſpect between the heir and the Feoffees, and by this means the ſame may be pleaded by the heir that made it. And ſo it is adjudged in our Books, which is a notable caſe for many purpoſes.

(d) 33 E.3. tit. Judg. 254. 8 E.3.69. 17 E.3.58. b. 3 E.3. tit. Dower 76. 3 E.3. vouch. 196. ſee the ſecond part of the Inſtit. W.1. cap.49.

Fifthly, If aſſignment be made (e) by any diſſeiſor, abator, intruder, or any wrong-doer, of Lands or Tenements, if they came to that eſtate by colluſion and covin between the widow and them. albeit the widow hath juſt cauſe of action, and the aſſignment be indifferently made after judgment by the Sheriff of an equal third part, yet ſhall the Diſſeiſee, &c. avoid it, for covin in this caſe ſhall ſuffocate the right that appertained to her, and ſo the wrongful manner ſhall avoid the matter that is lawful.

(e) 25 Aſſ. p.1.44. Aſſ.29. 44 E. 3.46. 27 Aſſ.74. 11 H.4.60. 15 E.4.4. 19 H.8.12. Lit.83.131.

Sixthly, In aſſignment by (f) a diſſeiſor, abator, intruder, &c. if there be no covin, is good, unleſſe it be prejudicial to the diſſeiſee, &c. As if the husband (g) infeoffeth the younger ſon with warranty, the eldeſt ſon diſſeiſe the youngeſt ſon, and endow the widow; in this caſe the younger ſon ſhall avoid this aſſignment, for otherwiſe he ſhall loſe his warranty: but a diſſeiſor, abator, intruder, &c. cannot aſſign a rent out of the land to her for her Dower, to bind the diſſeiſee, &c.

(f) 12 Aſſ.p.20. 21 E.3.18.
(g) 3 E.3. tit. Dower 77. 16 E.2. tit. Dower. Statham.

Seventhly, No aſſignment can be made, but by ſuch as have a freehold, (as hath been ſaid) or againſt whom a writ of Dower doth lye; and therefore (h) an aſſignment by a Gardian in Socage is void, but a Gardian in Chivalry may aſſign Dower, as ſhall be ſaid hereafter, becauſe a Writ of Dower lieth againſt him, and not againſt a Gardian in Socage.

(h) 31 E.1. Dower 152. 29 Aſſ. 68. 15 E. 3. Dower 69.

Eightly, And before the Gardian in Chivalry enter, the heir within age (i) may aſſign Dower, for the Gardian may waive the Wardſhip. And ſo briefly have you heard, of what, by whom, and to whom the aſſignment muſt be made. But there needeth neither livery of ſeiſin, nor writing to any aſſignment of Dower, becauſe it is due of common right.

(i) 7 R.2. Ameſurement. 4. F.N.B. 148. f.

Sect. 40.

¶ DOwment Ex aſſenſu patris eſt, lou le pere eſt ſeiſie de Tenements en Fee, & ſon fits & heire apparent, quant il eſt eſpouſe, endowe ſa feme al huys del Monaſterie ou del Eſglíſe, de parcel de Terres ou Tenements ſon pere de aſſent ſon pere, & aſſigni la quantity & les parcels. En ceo caſe apres le mort le fits,

DOwment by aſſent of the father is, where the father is ſeiſed of Tenements in fee, and his ſon and heir apparent when he is married, endoweth his Wife at the Monaſtery or Church door, of parcel of his fathers Lands or Tenements, with the aſſent of his Father, and aſſigns the quantity and parcels. In this caſe, after the Death of the

¶ *Lou de pere eſt ſeiſie de tenements en fee.* Tenant for life of a Carve of the Land, the reverſion to the father in fee, the ſon & heir apparant of the father endoweth his wife of this Carve, by the aſſent of the Father, the Tenant for life dieth, the husband dieth, the reverſion was a Tenement in the father, and yet this is no good endowment Ex aſſenſu patris, becauſe the father at that time of the aſſent had but a reverſion expectant upon a freehold, whereof he could not have endowed his own wife: & albeit the Tenant for life died, living the husband, yet quod initio non valet, tractu temporis non convaleſcet.

Brit. cap.109. Fleta lib.5. cap.22,23. Bract. lib.5. 305. 6 E.3.34. F.N.B. 150.

And

And for the moſt part Dower ad oſtium Eccleſiæ, & Ex aſſenſu patris, enſue the nature of a Dower at the Common Law. And for theſe the wife may have a writ of Dower, albeit they be certain, as for the third part at the Common Law.

¶ *Et ſons fits & heire apparent.* It muſt be ſuch a ſon & heir apparent, as muſt continue an heir apparent, and therefore the youngeſt ſon and heir apparent cannot endow his wife Ex aſſenſu partis, of lands whereof the Father is ſeiſed in Fee of the nature of Borough Engliſh, becauſe the father may have another ſon, and then the husband is not heir apparent: and it is in reſpect of the conſtant and perpetual apparance, that the ſon and heir apparant may endow his wife of his fathers Land. And ſo it is of Lands in Gavelkind: (k) and this is the reaſon that Dower Ex aſſenſu fratris, or Conſanguinei, is not good; for that albeit he is heir apparant at that time, yet for the common poſſibility, that he may have iſſue, and every iſſue that the brother or coſin ſhould have afterwards, ſhall exclude him, he is no ſuch heir apparant as the Law intendeth. (l) But an endowment Ex aſſenſu matris, is as good as Ex aſſenſu patris, becauſe there is an appearance of a conſtant and perpetual heir. And ſome have ſaid, that if the father after his aſſent, be attainted of treaſon or felony, that the wife in that caſe loſeth her Dower, becauſe her husband doth not continue heir.

la feme entera en meſme le parcel ſauns auter aſſignment de nulluy. Mes il ad eſte dit en ceſt caſe, que il covient a la feme daver un fait de le pere provant ſon aſſent & conſent de cel endowment. M. 44. E. 3. fol. 45.

ſon, the wife ſhal enter into the ſame parcell without the aſſignment of any. But it hath been ſaid in this caſe, That it behooveth the wife to have a Deed of the father, to prove his aſſent and conſent to this endowment. *M.* 44 *E.* 3. *fol.* 45.

(k) 8 H. 3. Dower 198. 9 H. 3. Dower 191. 11 H. 3. Dower F. N. B. 150. l. 29 E. 3. Dower 154.

(l) F. N. B. 150. e. Flet. lib. 5. cap. 22. Bract. lib. 4. 305. Ambr. Gorges caſe, lib. 6. fol. 22.

¶ *Quant il eſt eſpouſe, endow ſa feme.* (m) In this caſe, albeit the Freehold and Inheritance is in the father, yet in reſpect (as hath been ſaid) of the conſtant and perpetuall apparance of the heir, the heir apparant doth endow, and the father doth but aſſent. And therefore where the father did endow the wife of his ſon and heir apparant, that endowment was holden void, becauſe the husband in that caſe muſt endow, and the father aſſent.

(m) 2 H. 3. Dower 199. 6 E. 3. 34. 8 E. 2. Dower 154.

And it is holden 2 H. 3. Dower 199. That if the heir apparant be within age, yet the endowment Ex aſſenſu patris, is good. Note, Littleton in the caſe of Dower Ad oſtium Eccleſiæ, doth put the husband of full age, but here of the Dower Ex aſſenſu patris, he ſpeaketh generally.

2 H. 3. Dower 199.

¶ *Et aſſigne le quantity & les parcels.* So as both in Dower Ad (n) oſtium Eccleſiæ, & Ex aſſenſu patris, the certainty muſt be expreſſed. And therefore where books ſpeak of a moyety, it is intended (as hath been ſaid) of an half in certain.

(n) 9 H. 3. Dower 190. F. N. B. 150. m. 9 E. 2. Dower 154.

¶ *Apres la mort le fits ſa feme entera.* In this caſe, after the death of the husband the wife ſhall enter, or have a writ of Dower, albeit the father be alive.

¶ *Quæ il covient al feme daver un fait provant ſon aſſent a cel indowment.*

¶ *Un fait.* A Deed, Factum, This word (Deed) in the underſtanding of the Common Law, is an Inſtrument written in parchment or paper, (o) whereunto ten things are neceſſarily incident: viz. Firſt, Writing. Secondly in Parchment or Paper. Thirdly, a perſon able to contract. Fourthly, by a ſufficient name. Fifthly, a perſon able to be contracted with. Sixthly, by a ſufficient name. Seventhly, a thing to be contracted for. Eighthly, apt words required by Law. Ninthly, Dealing. And tenthly, Delivery. A Deed cannot be written upon wood, leather, cloth, or the like, but only upon parchment or paper; for the writing upon them can be leaſt bituated, altered, or corrupted.

(o) Bract. lib. 2. fol. 33, &c. & lib. 5. fol. 396. Brit. fol. 34. 65, 66. 101. Flet. lib. 2. cap. 14. & lib. 6. cap. 32. & lib. 3. cap. 3, 4, 5, 6.

If a Deed (p) be alleaged in Count or Plea, regularly it muſt be ſhewed to the Court; to the end, the Court may judge whether there be apt words to make it a good contract, according to the rule of Law, whereof more ſhall be ſaid in the Chapter of Conditions. But if Non eſt factum be pleaded, becauſe thereby the ſealing, delivery, or other matter of fact is denied, ſhall be tried by the Country. Of Deeds, ſome be indented, and ſome be Deeds poll. Of indented ſome be bipartite, ſome tripartite, ſome quadripartite, &c. whereof more ſhall be ſaid in the Chapter of Conditions. Alſo of Deeds, ſome be inrolled, and ſome (q) be not inrolled; if it be inrolled according to the Statute of 27 Hen. 8. cap. 10. it muſt be inrolled in parchment for the ſtrength and continuance thereof, and not in paper, and ſo it was reſolved in Parliament by the Juſtices

(p) 4 E. 2. Fines 116. 14 E. 2. Ley. 79. 4 E. 2. Ley 78. 27 H. 6. 10. 27 H. 8. 22. F. N. B. 122. I.

(q) Brit. fol. 101. Bract. lib. 2. fol. 33. Flet. lib. 3. cap. 14.

ges in Anno 13 Eliz. Now for the reſt of the parts of a Deed, you ſhall read thereof plentifully in our Books, and in my Reports; which by this ſhort inſtruction you ſhall eaſily underſtand.

¶ *Un fait de feoffment.* It is properly called Charta feoffamenti, and yet if ſuch a Deed be denied, the plea is non eſt factum. So as of Deeds ſome concern the realty, as here a Deed of feoffment, ſome the perſonalty, as Deed of gift of goods, Obligations, Bills, &c. And ſome mixt, whereof more ſhall be ſaid in the Chapter of Releaſes.

If a man deliver a Writing ſealed, to the party to whom it is made, as an eſcrow to be his Deed upon certain conditions, &c. this is an abſolute delivery of the Deed, being made to the party himſelf; for delivery is ſufficient without ſpeaking any words (otherwiſe a man that is mute could not deliver a Deed) and tradition is only requiſite, and then when the words are contrary to the Act, which is the Delivery, the words are of none effect, non quod dictum, ſed quod factum eſt inſpicitur. And hereof though there hath been (r) variety of opinions, yet is the Law now ſetled agreeable to judgments in former times, and ſo was it reſolved by the whole Court of Common Pleas. But it may be delivered to a ſtranger, as an eſcrow, &c. becauſe the bare act of delivery to him without words worketh nothing. And this is the ancient diverſity (l) in our Books, the Record whereof I have ſeen agreeable with the reaſon of our old Books. And as a Deed may be delivered to the party without words, ſo may a Deed be delivered by words without any act of delivery, as if the Writing ſealed lieth upon the Table; and the Feoffor or Obligor ſaith to the Feoffee or Obligee, Go and take up the ſaid Writing, it is ſufficient for you, or it will ſerve the turn, or take it as my Deed, or, the like words, it is a ſufficient delivery.

35 Aſſ. Pl. 11. Tr. 29 H.8. Dyer. 95.

(r) Tr. 43 Eliz. inter Hawkesby and Lacher in the Kings Bench. Hill. 12. Ja. R. in the Common Place.

(ſ) 13 H.8. 19 H. 8. 8. 4 E. 3. 18. 13 H. 4. 8.

Of Deeds and their diſtinctions you ſhall read excellent matter in antiquity, (t) Cartarum, alia regia, alia privatorum; & regiarum, alia privata, alia communis, & alia univerſitatis: Privatarum, alia de puro feoffamento & ſimplici, alia de feoffamento conditionali ſive conventionali, alia de recognitione pura, vel conditionali, alia de quiete clamantia, alia de confirmatione, &c. Verba intentioni, non è contra, debent inſervire.

(t) Bract. lib. 2. fol. 33. b. Fleta, lib. 3. cap. 14.

Carta non eſt (u) niſi veſtimentum donationis. Carta non eſt niſi veſtimentum orationis. Nemo tenetur armare adverſarium ſuum contra ſe. Scriptum eſt inſtrumentum ad inſtruendum quod mens vult. Carta eſt legatus mentis. (w) Benignæ ſunt faciendæ interpretationes cartarum propter ſimpliciratem laicorum ut res magis valeat quam pereat. Nil tam (x) conveniens eſt naturali æquitati quam voluntatem Domini volentis rem ſuam in alium transferre, ratam habere.

(u) Fleta lib. 6. cap. 28. Bracton. Bract. lib. 2. fol. 34.

(w) Bracton. lib. 2. fol. 94, 95.

(x) Idem lib. 2. fol. 18.

(y) Re, verbis, ſcripto, conſenſu, traditione,
Junctura veſtes ſumere pacta ſolent.

(y) Pl. Com. in Throgmortons Caſe fol. 161. b.

Verba Cartarum fortius accipiuntur contra proferentem. Generale dictum generaliter eſt intelligendum. Verba debent intelligi ſecundum ſubjectam materiam. Carta de non ente non valet.

Note, the Father may (a) make a Deed to the wife of his ſon, and ſo is the Law holden, for that the Fathers Land by his aſſent is charged with a future Freehold, whereunto a Deed is requiſite, but to a Dower Ad oſtium Eccleſiæ, no Deed is requiſite. And here it is not well done (of him that made the addition to our Author) to vouch 44 E. 3. fol. 45. becauſe the Author himſelf vouched it not; for if he (b) meant to have vouched authorities, he would have vouched more than one in this caſe, and thoſe that (c) he vouched, he would have cited truly; but this caſe is miſtaken both in the year, and in the leaf: for where it is cited in 44 E. 3. it is in 40 E. 3. and where he ſaith it is fol. 45. it is fol. 43.

(a) 3 E. 2. Dower 126. 8 E. 2. Dower 154. 6 E. 3. 34. 40 E. 3. 43.

(b) 11 H. 3. Dower 186. 14 H. 3. Dower.

(c) 2 E. 2. Dower 125. Vid. Stat. Walliæ anno. 12 E. 1. fol. 18. in veteri. Magna Charta. 47 H. 3. Dower 174.

An aſſignment of Dower (d) either Ad oſtium Eccleſiæ, or Ex aſſenſu patris, may be made of more than a third part. But the ancient Law is that no greater aſſignment could be made in thoſe caſes, but of a third part; but leſs he might, as appeareth in Glanvil.

(d) F. N. B. 150. p. Glanvil lib. 6. cap. 1. 2. 3

Sect. 41.

¶ Et ſiaps l' mort le baron el enter & agree a aſcun tiel Dower de les dits dowers Ad oſtium Eccleſiæ, &c. donque

AND if after the death of her Huſband, ſhe entreth and agree to any ſuch dower of the ſaid dowers at the Church door, &c. then

¶ *El eſt conclude a claimer aſcun auter dower per la common ley.* Wherein a diverſity is to be obſerved between a Dower Ad oſtium Eccleſiæ, or Ex aſſenſu patris, and a Joynture

Joynture or Eſtate made to the wife in ſatisfaction of her Dower; for one of thoſe Dowers being aſſented unto, is a bar of the Dower at the Common Law, but a Joynture was no bar of her Dower at the Common Law. For a right or title, that one hath to a Freehold, cannot be barred by acceptance of collaterall ſatisfaction. But a woman cannot have a double Dower, viz. Ad oſtium Eccleſiæ, &c. and at the Common Law; for the wife of one husband can have but one Dower. But ſince Littleton wrote, by the Statute of 27 H. 8. if a Joynture be made to (a) the wife according to purview of that ſtatute, it is a bar of her Dower, ſo as the woman ſhall not have both Joynture and Dower, and to the making of a perfect Joynture within that ſtatute, ſix things are to be obſerved. Firſt, her Joynture by the firſt limitation is to take effect for her life in poſſeſſion or profit, preſently after the deceaſe of her Husband. Secondly, that it be for the term of her own life, or greater Eſtate. Thirdly, it muſt be made to her ſelf, and to no other for her. Fourthly, it muſt be made in ſatisfaction of her whole Dower, and not of part of her Dower. Fifthly, it muſt either be expreſſed or averred to be in ſatisfaction of her Dower. And ſixthly, it may be made either before or after marriage.

el eſt conclude de claimer aſcun auter Dower per le Common Ley daſcuns terres ou tenements que fueront a ſa dit baron. Mes ſi el voit, el poit refuſer tiel Dower Ad oſtium Eccleſiæ, &c. & donqꝫ el poit eſtre endow ſolonque le cours del Common Ley.

ſhe is concluded to claim any other Dower by the Common Law of any the Lands or Tenements which were her Husbands; but if ſhe will, ſhe may refuſe ſuch Dower at the Church door, &c. and then ſhe may be endowed after the courſe of the Common Law.

Vernons caſe lib. 4. fol. 1. 1 Mariæ Dyer 91. 31 E. 3. Scire fa. 99. 20 H. 4. 3.

27 H. 8. cap. 10. (a) 12 E. 2. Dower 158. 27 H. 8. cap. 10. verſus finem.

Concerning the firſt. if a man make a Feoffment in fee of Lands or Tenements, either before or after marriage, to the uſe of the Husband for life, and after to the uſe of A. for life, and then to the uſe of the Wife for life in ſatisfaction of her dower; this is no Joynture within the ſtatute, becauſe by the firſt limitation it was not to take effect in poſſeſſion or profit, preſently after the death of her Husband. And albeit in that caſe A. ſhould die living the Husband, and after the death of the Husband, the Wife entreth; yet this is no bar of her Dower, but ſhe ſhall have her Dower alſo, becauſe it is not within the ſaid Statute, and (as it hath been ſaid) by the Common Law it was no bar of her Dower. 2. It muſt be either in Fee tail, or for term of her own life for an Eſtate for life or lives of one or many other, or to her for an hundred or a thouſand years, &c. if ſhe live ſo long, or without ſuch limitation, is no bar of her Dower, albeit they be expreſly made in ſatisfaction of her Dower, Cauſa qua ſupra. 3. If an Eſtate be made to others in Fee ſimple, or for her life upon truſt, ſo as the Eſtate remain in them, albeit it be for her benefit, & by her aſſent, and by expreſs words to be in full ſatisfaction of her Dower, yet is this no bar of her Dower. The fourth is ſo plain as it needeth not any example. 5. A deviſe by Will cannot be averred to be in ſatisfaction of her Dower, unleſs it be ſo expreſſed in the Will. 6. If the Joynture be made before marriage, the Wife cannot waive it, and claim her Dower at the Common Law, but if it be made after marriage, ſhe may waive the ſame, and claim her Dower. I have touched theſe points the more ſummarily, becauſe they are reſolved at large with the reaſons thereof in Vernons caſe ubi ſupra. So as to comprehend all in few words, A Joynture (which in common underſtanding extendeth as well to a ſole Eſtate as to a joint Eſtate with her Husband) is a competent livelihood of Freehold for the Wife of Lands or Tenements, &c. to take effect preſently in poſſeſſion or profit, after deceaſe of the Husband, for the life of the Wife at leaſt, if ſhe her ſelf be not the cauſe of the determination or forfeiture of it. Which ſee more at large in Vernons caſe ubi ſup. If a Joynture be made to a Wife of lands before the Coverture, and after the Husband and the Wife alien by fine thoſe Lands ſo conveyed for her Joynture, ſhe ſhall not be endowed of any of the other Lands of her Husband. But if the Joynture had been made after marriage, notwithſtanding the alienation by the Husband & Wife thereof by fine; yet ſeeing her Eſtate was originally waivable and the time of her election came not till after the deceaſe of her husband, ſhe may claim her Dower in the reſidue of her Lands. But in the other caſe, the Joynture of the wife made before marriage, was not waivable at all. now as the Dower Ad oſtium Eccleſiæ, and Ex aſſenſu patris, is better for the wife, becauſe in reſpect of the certainty, ſhe may enter; then the Dower at the Common Law, where ſhe is driven to her real action, and therefore Britton calleth Dower Ad oſtium Eccleſiæ, and Ex aſſenſu patris, Eſtabliſhment of Dower by the husband, and aſſignment of Dower after his deceaſe (for nothing that is uncertain is eſtabliſhed:) But a Joynture (that hath the force of a bar of Dower by the ſaid act of 27 H. 8.) is, as hath been ſaid, more ſure or ſafe for the Wife than either Dower

Lecke and Randals caſe, lib. 4. fol. 4.

Vide Vernons caſe, ubi ſupra, fol. 2. b.

Dyer 19 Eliz. 358.

Brit. cap. 102, 103.

Ad

ad oſtium Eccleſiæ, or ex aſſenſu patris, for beſides it is as certain as thoſe others, and ſhe may enter into it, after the death of her husband and not be driven to her action. She ſhall not be barred of her Joynture albeit her husband commit treaſon or felony, as ſhe ſhall be both of her Dower, ad oſtium Eccleſiæ and ex aſſenſu patris by the Common Law. But now at this day by the Statutes of 1 E. 6. cap. 2. and 5 E. 6. cap. 11. a wife ſhall not loſe any title of Dower which to her was accrued, by the attainder of her husband by any manner of murder or other felony whatſoever. But (a) if the husband be attainted of high treaſon or petty treaſon, ſhe ſhall be (b) barred of her Dower at this day, ſo long as the attainder ſtandeth in force.

Bract. 311. lib. 4. Britton cap. 15.

1 E. 6. ca. 6. 5 E. 6. ca. 11.

(a) Stanford 195. b.

(b) Vid. in the Chapter of Garrantie, ſect.

¶ *Conclude*, commeth of the (c) verbe Concludo, which is deriued of con and claudo, to determine, to finiſh, to ſhut up, to eſtoppe, or barre a man, to plead or claim any other thing. Vid. Eſtoppell.

(c) Pl. Com. 276. b. per Walſh. Vid. Sect. 693. 695. 667. 679.

Sect. 42.

¶ ET nota que nul feme ſerra endow ex aſſenſu patris en le forme avantdit, mes lou ſa baron eſt fits & heire apparant a ſon pere. Quære de ceux deux cases de dowment ad oſtium Eccleſiæ, &c ſi la feme al temps del mort ſa baron, ne paſſe lage de ix. ans, ſi el avera dower ou non.

AND note that no wife ſhall be endowed *ex aſſenſu patris* in form aforeſaid, but where her husband is Son and heir apparant to his father. *Quere* of theſe two caſes of dowment *ad oſtium Eccleſiæ, &c.* if the wife at the time of the death of her husband be not paſt the age of 9 years, whether ſhe ſhall have dower or no.

¶ *Nul feme ſerra endowe, &c.*

Of this, ſufficient hath been ſaid before.

¶ *Quære de ceux deux caſes de dowment ad oſtium Eccleſiæ, &c.*

And it ſeemeth that theſe dowers being made by aſſent &c. that the ſame are good albeit the wife be within the age of nine years, for Conſenſus tollit errorem. But without queſtion a Joynture made to her under or above the age of nine years, is good.

Sect. 43.

¶ ET nota que en touts cases lou le certaintie appiert queux tres ou tenements feme avera pur ſa dower, la le feme poit entrer aps la mort ſa baron, ſans aſſignment de nul uy. Mes lou le certaintie ne appiert, ſi come deſtre endow de la tierce part daver en ſeveraltie, ou del moyetie ſolonque le cuſtome de tenir

AND note that in all caſes, where the certainty appeareth what Lands or Tenements the wife ſhall have for her Dower, there the wife may enter after the death of her husband without aſſignment of any. But where the certainty appears not as to be endowed of the third part, to have in ſeveralty, or the moyety according to the cuſtom

¶ *ET nota que en touts caſes, &c.*

In all caſes where the demand of the Dower is certain as in caſe of Dower ad oſtium Eccleſiæ or ex aſſenſu patris, there the wife after the death of the husband may enter. But where the demand is uncertain, as in Writs of Dower at the Common Law, there albeit the thing it ſelf be certain, yet ſhall ſhe not take it without aſſignment. As if a woman bring a Writ of Dower of three ſhillings rent, albeit ſhe ought to be endowed of one ſhilling, yet cannot ſhe after judgment diſtrein for twelve pence before aſſignment becauſe the demand was uncertain.

40 E. 3. 22. 43. 45 E. 3. 4. 20 E. 3. barre 138. 8 E. 2. Entrie 75.

certain. And ſo it is if two Tenants in common be, and the Wife of one of them bring a Writ of Dower to be endowed of a third part of a moyety, & have judgment to recover, yet cannot ſhe enter without aſſignment, albeit the aſſignment cannot give her any certainty becauſe her husbands ſtate was incertain. See more of this before, Sect. 39.

en ſeveraltie, en tielz caſes il covient que ſa Dower ſoit a luy aſſigne apꝛs le moꝛt del Baron, pur ꝙ que non conſtat devant aſſignment quel part des terres ou tenements el avera pur ſa Dower.

to hold in ſeveralty; In ſuch caſes it behoveth that her Dower be aſſigned unto her after the death of her huſband, becauſe it doth not appear before aſſignment what part of the lands or tenements ſhe ſhall have for her Dower.

Sect. 44.

Of this ſufficient hath been ſaid before, and that in this caſe the wife cannot enter without aſſignment.

¶ MEs ſi ſoient deux joyntenants de certaine terre en fee, & lun alien ceo que a luy affiert a un auter en Fee, que pꝛent feme & puis debie; en ceo cas la feme pur ſa dower avera la tierce part de la moyetie que ſa baron ad purchaſe, a tener en common (come ſa part amountera) ovelque l'heire ſa baron, & ovelque lauter joyntenant que ne aliena pas, pur ceo que en tiel cas ſa dower ne poit eſtre aſſigne per metes & bounds.

BUt if there be two joyntenants of certain land in fee, and the one alieneth that which belongeth to him, to another in fee, who taketh a wife, and after dieth; In this caſe the wife for her dower ſhall have the third part of the moyety which her husband purchaſed, to hold in common (as her part amounteth) with the heir of her husband: and with the other joyntenant, which did not alien. For that in this caſe her dower cannot be aſſigned by metes and bounds.

Sect. 45.

¶ The reaſon of this diverſity is for that the joyntenant which ſurviveth, claimeth the land by the feoffment, and by ſurvivorſhip, which is above the title of Dower, and may plead the feoffment, made to himſelf without naming of his companion that dieth, as ſhall be ſaid hereafter in his proper place, but Tenants in common have ſeveral Freholds and Inheritances, and their moyeties ſhall deſcend to their ſeveral heirs, and therefore their wives ſhall be endowed.

¶ ET eſt alcavoir q̃ la feme ne ſerꝛ my endow de terres ou tenements q̃ ſa baron tient joyntment ovelque un auter al temps de ſon moꝛant: mes lou il tient en common, auterment eſt, come en le caſe pꝛochein avantdit.

AND it is to be underſtood that the wife ſhall not be endowed of lands or Tenements which her husband holdeth joyntly with another at the time of his death: but where he holdeth in common, otherwiſe it is, as in the caſe next aboveſaid.

Sect.

Sect. 46.

¶ ET eſt aſcavoir que ſi tenant en le tail endowa ſa feme ad oſtium Eccleſiæ, come eſt avantdit, ceo ſervera pur petit ou rien al feme, pur ceo que apres la mort ſa baron liſſue en le taile puit entrer ſur le poſſeſſion la feme: Et iſſint puit celuy en le reverſ. ſi ne ſoit iſſue en le taile en vie, &c.

AND it is to be underſtood, that if tenant in taile endoweth his wife at the Church door, as is aforeſaid, this ſhall little or nothing at all availe the wife, for that, that after the deceaſe of her husband, the iſſue in tail may enter upon her poſſeſſion, & ſo may he in the reverſion, if there be no iſſue in taile then alive.

¶ THE reaſon of this is, for that Tenant in taile is reſtrained by the ſaid ſtatute of 13 E. 1. de donis conditionalibus.

And ſo did our Authour take the Law in his learned Reading. Here our Authours reaſon is à fine and therefore ſuch an Endowment is not to be made, becauſe it is to no end. Vide Sect. 194.

Sect. 47.

¶ AUxy ſi home ſeiſie en Fée ſimple eſteant deins age endowa ſa feme al huiz del monaſterie ou deglíſe, & devie, & ſa feme enter, en ceo cas le heire la baron luy puit ouſter. Mes auterment eſt (come il ſemble) lou la pere eſt ſeiſie en Fée, & le fits deins age endow ſa feme ex aſſenſu patris, le pere donque eſteant de plein age.

ALſo if a man ſeiſed in Fee ſimple being within age endoweth his wife at the Monaſterie or Church door, and dieth, and his wife enter, in this caſe the heire of the Huſband may out her. But otherwiſe it is, (as it ſeemeth) where the Father is ſeiſed in Fee, and the Son within age endoweth his Wife *ex aſſenſu patris*, the Father being then of full age.

¶ THE reaſon of this diverſity is for that in the firſt caſe the husband within age is ſeiſed, and therfore he being within age cannot by a voluntary act bind himſelf: otherwiſe it is where he doth an act whereunto he is compellable by Law, but in the latter caſe the Father which giveth the aſſent, is ſeiſed of the Freehold and Inheritance, & the ſon therein hath nothing, & therefore his heir ſhall not avoid it in reſpect of his Infancy. Vide 9 H. 3. tit. Dower 197.

Sect. 48.

¶ AUxy il y ad un auter endowment, que eſt appel dowment de la pluis beale. Et ceo eſt come en tiel caſe, que home ſeiſie de xl. acres de terre, & il tient vint

AAſo there is another dower which is called dowment *de la pluis beale*. And this is in caſe where a man is ſeiſed of forty acres of Land, and he holdeth twenty acres of

¶ ET *le Seignior de que le terre eſt tenus en Chivalry enter en les vint acres tenus de luy.* For he is not poſſeſſed as a Gardein againſt whom a Writ of Dower lieth, until he doth enter: of the Wardſhip of the body he is poſſeſſed before ſeiſure, be-

cauſe it is tranſitory, but he is not poſſeſſed of the land until he enter, becauſe it is permanent. And therefore if he doth not enter, the heir within age may aſſign Dower, as hath been ſaid, and as it appeareth afterwards.

Vide le ſtatut. de bigamis, cap. 3.

¶ *Si en tiel caſe el port breve de dower envers le Gardein en Chivalrie.* Albeit (a) the Gardein in Chivalrie or the Grantee of the King of a Wardſhip hath but a Chattel during the minority of the heir, and the woman ſhall recover a Freehold in her Writ of Dower, yet after the Gardein, as is aforeſaid, hath entred into the Land, that Writ lieth againſt him, and not againſt the heir who is Tenant of the Freehold, becauſe the Law hath truſted the Gardein to plead for the heir within age, and that is in his cuſtody, and alſo for his own particular intereſt, and by this diverſity all the Books be reconciled. So likewiſe if the Gardein dye, the Wife ſhall have a Writ of Dower againſt his Executors, and if there be two Executors, and one of them alone take the profits, the Writ of Dower ſhall be maintained againſt him only. If a man be poſſeſſed of the Wardſhip of certain Land, either jointly with his Wife, or in the right of his Wife, yet the Writ of Dower lieth againſt the husband only. Gardein in Socage ſhall not endow her ſelf de la pluis beale without judgment, as ſhall be ſaid hereafter.

(a) 44 E.3.13. 4 H.6.11. Stant. pier. 13. 6 E.3.15. 16 E.3. Breve 657. Temps E.1. Breve 863. 11 E.3. Breve 473. 45 E.3.5 17 E.3.70. 1 H.7.17. 4 H.7.1. 4 H.7. aid le Roy 33. 38 E. 3. 13. 9 H.6.6.b. 39 E.3.8. 8 E.2 Dower 169. 8 E.2. Breve 809. 12 E.4. Dower 16.

8 E. 3. 52.

2 E. 3. 25, & 31. 38 E. 3. 37. 47 E.3. 9. b.

¶ *Le Gardein en Chivalrie poit pleader.* The authority of Littleton is direct that the Gardein may plead this Plea. But hereof ariſe two queſtions. Firſt, Whether if the Heir be vouched by the Tenant in the Writ of Dower in the gard of the Gardein, whether he coming in as Vouchee may plead that Plea. The ſecond is, Whether if the Gardein in

acres de les dits xl. acres de terre dun per Service de Chivalrie, & les auters dint acres de terre dun auter en Socage, & prent feme, & oüt iſſue fits, & morust, ſon fits eſteant deins lage de xiiii. ans, & le Seigniour de que la terre eſt tenus en Chivalrie, entre en les xx. acres tenus de luy, et eux ad come Gardein en Chivalrie durant le nonage lenfant, & la mere de lenfant enter en le remnant, & ceo occupie come Gardein en Socage: ſi en tiel caſe la feme port Briefe de Dower envers le Gardein en Chivalrie, deſire endow de les Tenements tenus per ſervice de Chivaler en le Court le Roy, ou en auter Court, le Gardein en Chivalrie puit plede en tiel caſe tout ceſt matter & monſtre coment la feme eſt Gardein en Socage, coment devant eſt dit, & prie que ſerra adjudge per la Court que la feme luy meſme endowera de le pluis beale de les Tenements que el ad come Gardein en Socage ſolonque le value de le tierce part

the ſaid forty acres, of one by Knights Service, and the other twenty acres of another in Socage, and taketh wife, and hath iſſue a ſonne, and dieth, his ſonne being within the age of fourteen years, and the Lord of whom the Land is holden by Knights Service entreth into the twenty acres holden of him, and holdeth them as Gardein in Chivalrie, during the nonage of the Infant, and the mother of the Infant entreth into the reſidue, and occupieth it as Gardein in Socage. If in this caſe the Wife bringeth a Writ of dower againſt the Gardein in Chivalry to be endowed of the Tenements holden by Knights Service, in the Kings Court, or other Court, the Gardein in Chivalrie may plead in ſuch caſe all this matter; and ſhew how the wife is Gardein in Socage, as aforeſaid, and pray that it may be adjudged by the Court, that the Wife may endow her ſelfe *de le pluis beale*, i. of the moſt fair, of the Tenements which ſhe hath as Gardein in So-

que

que el claime daver de les Tenements tenꝰ en Chivalry p ſa briefe de Dower. Et ſi la feme ceo ne puit dedire, donq̃ le judgement ſerra fait, que le Gardein en Chivalrie tiendra les terres tenus de luy durant le nonage lenfant, quit de la feme, &c.

cage, after the value of the third part which ſhe claims by her Writ of Dower, to have the Tenements holden by Knights Service. And if the Wife cannot gainſay this, then the judgment ſhall be given, that the Gardein in Chivalry ſhall hold the Lands holden of him during the nonage of the infant, quite from the woman, &c.

Socage have not ſufficient, as if the Land holden by ſervice of Chivalry be thirty acres, and the Lands holden in Socage but five acres, whether ſhe ſhall be endowed by parcels, viz. to recover five acres againſt the Gardein in Chivalry, and to retain five acres. And as to the firſt the Gardein ſhall as well plead it, when he comes in as Voucher as when he is tenant. And as to the ſecond ſome ſay that the Demandant in the Writ of Dower muſt have aſſets in her hands to the value of her Dower, ſo as ſhe ſhall not be partly endowed againſt the Gardein, and partly retain it her own hands. And they ſay, that the judgment ſhould be in part, that is, as to the Land in Socage in Severalty, and as to the Land in Chivalry to recover the third part, and compare it to the caſe in 8 E.4.3. that damages ſhall not be recovered, partly againſt the Defendant in an appeal, and partly againſt the Abettors, but entirely either againſt the one or the other. And Littleton here putteth his caſe, that the Gardein in Socage hath aſſets in value, and ſeeing it is a Dower againſt common right, they hold that ſhe muſt be entirely endowed either by her ſelf againſt common right, or againſt the Gardein according to common right. But (a) yet by the Book in 25 E.3.52 b. and others, it appeareth that ſhe may in this very caſe retain for part, and recover againſt the Gardein for part.

5 E.3.60. 2 E.3.31. Lib. intrat. Dower fo.225.2. 18 E.3.4. b.

14 H.7.26. Keble.

(a) 25 E.3.52. b. 4 E.2. tit. di ſeiſin 10. Regiſt. judic.26. Lib. Intrat.22. 16 E.3. Breve 657. 20 E.3. judgment 175.

Gardein in Chivalry (b) ſhall plead in bar of her Dower, detainment, or eloning of the body of the Ward, becauſe his marriage doth appertain to him: And if the heir come in (c) as Vouchee, he ſhall plead the ſame Plea. But he ſhall not plead the detainment of the Charters, (d) becauſe the Charters concerning the Inheritance of the heir, belong not to the Gardein. The Gardein in Chivalry (e) may aſſign Dower of the Lands and Tenements he hath in Ward, or if he aſſign a Rent out of thoſe Lands in allowance of her Dower, it is good. If the Gardein in Chivalry aſſign too much for her Dower, the heir ſhall have a Writ of Admeſurement by the Common Law. And ſo (f) if the heir within age aſſign before the Gardein enter, to the wife too much in the Dower, the Gardein ſhall have a Writ of Admeſurement by the Statute of Weſt.2. cap.7. And if the heir within age, before the Gardein enter into the Land aſſign too much in Dower, he himſelf ſhall have a Writ of Admeſurement at full age: and ſome have ſaid, that in that caſe he may have it within age. (g) But if the heir (before the Gardein enter) endow the Wife of more than ſhe ought, and the Gardein aſſign over his Eſtate, his Aſſignee ſhall have no Writ of Admeſurement becauſe it was a thing in action. Alſo the heir ſhall have an (h) Admeſurement for the aſſignment in the life of his Anceſtor, by the Common Law, (i) and a Writ of Admeſurement lieth upon an aſſignment in Chancery.

(b) 7.E.3.57. 8 E3.71. (c) 17.E.3. 58. (d) 10.E.3.50.6 El Dyer 230. (e) 3 E.3. Dower 75. 8 E. 2. Dower 155. W.2. cap.7.

(f) Bract. lib. 4.314. Reg. origin. 171. Fleta lib. 5. cap.22. 7 E.2 tit. Admeſ. 13 F. N. B. 149.

(g) 7 R.2. Admeſ. F.N.B. 148. i. (h) 7.R.2. ubi ſup. F. N. B.149. 2. (i) 7 R.2. ubi ſup. 12 H.6. Admeſ.9. F.N.B.149.

¶ *Donques le judgement ſerra fait que le Gardein en Chivalrie tiendra les terres tenus de luy durant le nonage lenfant, quite de la feme, &c.*

25 E.3.51.

¶ *Judgment.* Judicium, quaſi Juris dictum, the very voice of the Law and Right, and therefore Judicium ſemper pro veritate accipitur. The ancient words of Judgment are very ſignificant, Conſideratum eſt, &c. becauſe that Judgment is ever given by the Court upon due conſideration had of the Record before them: and in every Judgment there ought to be three perſons, Actor, Reus, and Judex. Of Judgments ſome be finall, and ſome not finall, whereof you ſhall read more hereafter. And now to return to our Author, it is material that theſe words (& cætera) be explained at large, viz. Et quod prædicta A. (the Demandant) capiat de terris hæred' prædicti in cuſtodia ſua exiſtenſi ad valentiam præd. 3. partis cum pertinenſ tenend. nomine dotis ſuæ pro præd. 3. parte ſuperius per eam petit. Now ſome are of opinion, that upon this Judgment, the Demandant may not in any ſort endow her ſelf of the Land, becauſe ſhe cannot do an act to her ſelf, but ſhe ſhall recoup the third part of the profits upon her account, and be endowed againſt the heir at his full age. But obſerve what Littleton ſaith in the next Section: but before you come to that, obſerve what priviledge the Common Law giveth to

22 E.4 Dow.16. 16 E.3. Waſte 102. 45 E 3.6.

the Land holden by Knights ſervice, viz. that it ſhall not be diſmembred, but the whole Dower taken of the Lands holden in Socage, and the reaſon is for that Knights ſervice is for the defence of the Realm, which is pro bono publico, and therefore to be favoured.

Sect. 49.

ET nota, que apres tiel judgement done, la feme puit prender ces Viſines, & en lour preſent̄ endower luy meſme p metes & Bonds, de la pluis beale part de les teneſ̄ts que el ad cõe gardein en Socage, Dañ & tener a luy pur terme de ſa vie, & tiel dower eſt appel Dower de la pluis beale.

AND note, That after ſuch a judgement given, the wife may take her Neighbours, and in their preſence endow her ſelf by Metes & Bounds, of the faireſt part of the Tenements which ſhe hath as Gardein in Socage, to have and to hold to her for term of her life: and this Dower is called *Dower de la pluis beale.*

And the judgment, viz. Tenend' nomine Dotis, proveth, that ſhe may have it for term of her life, for every Dower is for term of life.

Sect. 50.

15 E.3. Dower 69.
16 E. 3. tit. Waſte, 100.

¶ *Ou le judgement eſt fait, &c.* For without ſuch a judgement as appeareth before, Gardein in Socage cannot endow her ſelf, as likewiſe hath been ſaid before.

Bract. lib.5. 329. F.N.B. 7, 8.

¶ *Ou en auter court.* That is by Writ of Right of Dower in the Court of the heir, if he have any, or of the Lord of whom the Land is holden.

¶ *Et ceo eſt pur ſalvation del eſtate del Gardein en Chivalrie, durant le nonage de lenfant.* For the heir (before the entry of the Gardein) cannot plead the ſaid plea, that the Demandant ſhould endow her ſelf de la pluis beale. And the reaſon of this Dower de la pluis beale to be all of the Socage Land, was for the advancement of Chivalry for the defence of the Realm.

¶ ET nota, q̄ tiel Dowment, ne puit eſſe, mes lou le judgement eſt fait en le court le Roy, ou en auter court, &c. & ceo eſt pur ſalvation del eſtate del Gardein in Chivalrie durant le nonage le Enfant.

AND note, that ſuch dowment cannot be, but where a judgement is given in the Kings Court, or in ſome other Court, &c. and this is for the preſervation of the Eſtate of the Gardein in Chivalrie, during the nonage of the Infant.

Sect. 51.

This is manifeſt of it ſelf, and therefore needeth no explanation.

¶ ET iſſint poyes veier cinque manners de Dower, ſ̄, Dower per le Common Ley, Dower per le cuſtome, Dower ad oſtium Eccleſiæ, Dower ex aſſenſu patris, & Dower de la pluis beale.

AND ſo you may ſee five kindes of Dower, *viz.* Dower by the Common Law; Dower by the cuſtome; Dower *ad oſtium Eccleſiæ*; Dower *ex aſſenſu patris* and Dower *de la pluis beale.*

Sect.

Sect. 52.

¶ Et memorandam que en chescun case lou home prent feme seisie de tiel estate de tenemts, &c. issint que lissue que il ad per son feme poit per possibility inherite meſmes les tenements de tiel estate que la feme ad come heire al feme, en tiel case apres le mort la feme il avera meſms les Tenements per le Curtesie de Angleterre, auterment nemy.

And *memorandum*, that in every case where a man taketh a Wife seised of such an Estate of Tenements, &c. as the issue which he hath by his Wife, may by possibility inherit the same Tenements of such an estate as the Wife hath, as Heir to the Wife; In this case, after the decease of the Wife, he shall have the same Tenements by the Curtesie of *England*, but otherwise not.

Memorandum, This word doth ever betoken some excellent point of learning, which our Author hath used in other places, as appeareth in the Margent. Sect. 234, 301, 335.

The matter hereof hath been partly explained in the Chapter of Tenant by the curtesie. If a man (a) taketh a Wife seised of Lands & Tenements in fee, and hath issue, and after the Wife is attainted of Felony, so as the issue cannot inherit to her; yet he shall be tenant by the Curtesie, in respect of the issue which he had before the Felony, and which by possibility might then have inherited. But if the Wife had been attainted of Felony before the issue, albeit he hath issue afterward, he shall not be Tenant by the Curtesie. (a) 21 E.3.9. 11 H.7. 3 H.7.17. Stam. fol.195. 27 E.3.77. 46 E. 3. Pet.20.26. Ass. p.2. 13 H. 4. 8.

¶ *Come heire al feme.* (b) Lib.8. fol. 34. In Paines Case.

This doth imply (b) a secret of Law, for except the Wife be actually seised, the heir shall not (as hath been said) make himself heir to the Wife, and this is the reason that a man shall not be Tenant by the Curtesie of a seisin in Law.

Sect. 53.

¶ Et auxy en chescun case lou le feme prent baron seisie de tiel estate des Tenements, &c. issint q̄ si per possibility il puissoit happer q̄ si le feme avoit alcū issue p̄ sa baron, & que m̄ issue puissoit per possibility enheriter meſmes les Tenements de tiel estate que le baron ad, come heire a le baron, de tiels Tenements el aver sa Dower, & auterment nemy. Car

And also in every case where a woman taketh a Husband seised of such an estate in tenements, &c. so as by possibility it may happen, that the Wife may have issue by her Husband, and that the same issue may by possibilitie inherit the same Tenements of such an Estate as the Husband hath, as heire to the Husband. Of such Tenements she shall have her Dower and otherwise not. For

¶ *Sint que si per possibility il puit happer que le feme avoit ascun issue per son baron.* Albeit the wife be a hundred years old, or that the Husband at his death was but four or seven years old, so as she hath no possibility to have issue by him: yet seeing the Law saith, That if the Wife be above the age of nine years at the death of her husband, she shall be endowed; and that Women in ancient times have had children at that age, whereunto no Woman doth now attain, the Law cannot judge that impossible, which by nature was possible. And in my time, a Woman above threescore years old hath had a child, and ideo non definitur, in 12 H.4.2. 7 H.6.11.12.

in jure. And for the husbands being of such tender years, he hath habitum, though he hath not potentiam at the time; and therefore his Wife shall be endowed.

¶ *Et que meſme liſſue puiſſoit per poſſibility inheriter meſmes les Tenements, &c.* A man seised of Land in general tail, taketh Wife, and after is attainted of Felony, before the said Statute of 1 E. 6. the issue should have inherited, and yet the Wife should not have been endowed: For the Statute of W. 2. cap. 1. relieveth the issue in tail, but not the Wife in that case. But at this day, if the Husband be attainted of Felony, the Wife shall be endowed; and yet the issue shall not inherit the Lands which the Father had in Fee simple. If the Wife elope from her Husband, &c. she shall be barred of her Dower, as hath been said, and yet the Issue shall inherit:

ſi tenẽts ſont doñs a un hõe & a les hẽes que il ingendra de ſon corps ſa feme en tiel caſe la feme nad riẽs en les tenements, & le baron ad eſtate forſque come Donée en eſpecial tail; uncore ſi le baron deby ſans iſſue, meſme la feme ſerra endow de meſmes les tenẽts, pur ceo que liſſue que el p poſſibility puiſſoit aver per meſme l' baron, puiſſoit enheriter meſmes les tenements. Mes ſi la feme deviaſt, vivant ſa baron, & puis l' baron prist auter feme, & moruſt, ſa ſecond feme ne ſerra my endow en ceſt caſe, cauſa qua ſupra.

if tenements be given to a man, and to the heires which he shall beget of the body of his Wife; in this case the Wife hath nothing in the Tenements, and the Husband hath an estate but as Donee in special tail; yet if the husband dy without issue, the same wife shall be endowed of the same Tenements, because the issue which she by possibility might have had by the same husband, might have inherited the same Tenements. But if the Wife dieth, living her Husband, and after the Husband takes another Wife and dieth, his second Wife shall not be endowed in this Case, for the reason aforesaid.

Sect. 54.

5 E. 3. Voucher 249.
8 E. 3. Aſſ. 393.
4 H. 6. 24. F. N. B. 149.

¶ You may easily perceive by the Context, that this shaft never came out of Littletons Quiver of choice Arrows; and therefore I will leave it. Only for Students sake, I will refer them to 5 E. 3. Voucher 249. 8 E. 3. Aſſ. 393. 4 H. 6. 24 F. N. B. 149.

¶ Nota, ſi un home ſoit ſeiſie de certain terres, & prist un feme, & puis aliena meſme la terre oue garranty, & puis le feoſor, & le feoffée deviont, & le feme de le feoffor port un action de dower envers le iſſue le feoffée, & il vouch l'heire le feoffor, & pendant le voucher & nient termine, la feme le feoffée port ſon action de dower envers le heire le feoffée, & demaunda le tierce part de ceo

NOte, if a man be seised of certain Lands, and taketh Wife, and after alieneth the same Land with Warranty, and after the feoffor and feoffee die, and the Wife of the feoffor bring an Action of Dower against the Issue of the Feoffee, and he vouch the Heir of the Feoffor; and hanging the Voucher and undetermined, the Wife of the Feoffee brings her action of Dower against the Heir of the

de

de que ſa Baron fuit ſeiſie, & ne voile demander le tierce part del eux deux parts de que ſa Baron fuit ſeiſie, fuit adjudge, que el navera judgement tanque lauter pleé fuit determine.

Feoffee, and demand the third part of that whereof her Husband was ſeiſed, and will not demand the third part of thoſe two parts of which her Husband was ſeiſed; It was adjudged, That ſhe ſhould have no judgement, untill ſuch time as the other plea were determined.

Sect. 55.

¶ ET nota, que Vaviſour dit, Que ſi un home ſoit ſeiſie de terre & fait felonie, & puis alien, & puis eſt attaint, la la feme avera bone action de Dower envers le Feoffee: Mes ſi foit eſchete al Roy, ou al Seignior, el navera bée de dower. Et ſic vide diverſitatem, & quære inde Legem.

AND note, *Vaviſour* ſaith, that if a man be ſeiſed of Land & committeth Felony, and after alieneth, and after is attaint, the wife ſhall have a good action of Dower againſt the Feoffee: but if it be eſcheated to the King, or to the Lord, ſhe ſhall not have a Writ of Dower. And ſo ſee the difference, and inquire what the law is herein.

¶ This is alſo of the new addition, & explosa eſt hæc opinio: for it is clear in Law, that the Wife at the Common Law ſhould not have been endowed againſt the Feoffee. For to deterre and to detain men from committing of Treaſon or felony, the Law hath inflicted five puniſhments upon him that is attainted of Treaſon or Felony. 1. He ſhall loſe his life, and that by an infamous death of hanging between heaven and earth, as unworthy in reſpect of his offence of either. 2. His Wife that is a part of himſelf, (Et erunt animæ duæ in carne una) ſhall loſe her Dower. 3. His bloud is corrupted, and his children cannot be heirs to him; and if he be noble or gentle before, he and all his poſterity are by this attainder made ignoble. 4. He ſhall forfeit all his Lands and Tenements; And 5. All his Goods and Chattels; and all this is included by the Law in the Judgment, Quod ſuſpendatur per collum. But this is not intended of all Felonies, but of Felony by ſtealing of goods above the value of xii pence; and not of petit larceny under the value. So as the woman ſhall loſe her Dower as well againſt the Feoffee as againſt the Lord by eſcheat. And ſo it was reſolved in a Writ of Dower brought by Mary Gates, late wife of John Gates, who after the coverture had infeoffed Wiſeman in fee, and after committed high Treaſon; and was thereof attainted, that the wife ſhould not be indowed againſt the Feoffee; and in that caſe it was reſolved, that ſo it was at the Common Law in caſe of Felony. And it is to be underſtood, that the wife ſhall not only loſe her reaſonable Dower at the Common Law for the felony of her Husband, but alſo her Dower Ad oſtium Eccleſiæ, and Ex aſſenſu patris, for felony done after the Dower aſſigned and Dower by cuſtom alſo. And the reaſon of all this, is yielded by Littleton himſelf in the Chapter of Warrantics, Sect. 746. to the end, that men ſhould be afraid to commit Felony. But at this day the wife of a man attainted of Felony (as often hath been ſaid, ſhall be endowed by force of the Statutes in that caſe provided.

And it appeareth by Britton, Que feme de homicide ne teigne nul dower de tenants que lour fuit aſſigne per lour barons, ſo as the wife of a Felon attainted by the Common Law, was diſabled to recover Dower Ad oſtium Eccleſiæ, and Ex aſſenſu patris, as well as her reaſonable Dower which the Common Law gave her. See in Bracton many barres of Dower, as the Law was then held.

Vide Sect. 746.
Vide Britton cap. 109. lib. 1.
Bracton title evidens, lib. 4. fol. 397, 30, 311.
Stant. pl. cor. 194, 195.
Britton fol. 15. p. 5.
vide ſect. 746.
M. 3. & 4. Ph. & Mar. Ro. 760. in Com. Banco.
8 E. 3. 20. 12 H. 4. 30.
Bracton lib. 4. fol. 311.
Vide Sect. 746.
Britton cap. le homicide, fol. 15.
Bracton lib. 4. fol. 308.
& Fleta ubi ſupra,
& Britton ubi ſupra.

CHAP.

CHAP. 6. *Sect.* 56.

Tenant a terme de vie.

¶ *Ou pur terme de vie dun auter home,*

¶ Tenant p̄ terme de vie eſt, lou home leſſa terres ou tenements a un auter pur terme de vie le Leſſee, ou pur terme de vie dun auter home, en tiel caſe le Leſſée eſt Tenant a terme de vie. Mes per common parlance celuy que tient pur terme de ſa vie demeſme, eſt appel Tenant pur terme de ſa vie, & ceſtuy que tient pur terme dauter vie, eſt appel Tenant pur terme dauter vie.

TEnant for term of life is, where a man letteth Lands or Tenements to another for terme of the life the Leſſee, or for term of the life of another man. In this caſe the Leſſee is Tenant for term of life. But by common ſpeech he which holdeth for term of his own life, is called Tenant for term of his life, and he which holdeth for term of anothers life, is called Tenant for term of another mans life.

Brack.lib.2.cap.5. & cap.9. fol.26. Fleta lib.3. cap.12. Britton fol. 83. Bracton lib.4. fol.170. Vide Sect. 381.

Now it is to be underſtood, that if the Leſſee in that caſe dieth, living Ceſtuy que vie (that is, he for whoſe life the Leaſe was made) he that firſt entreth, ſhall hold the land during that other mans life, and he that ſo entreth is within Littletons words, viz. Tenant pur auter vie, and ſhall be (a) puniſhed for waſte as Tenant pur auter vie, and ſubject to the payment of the Rent reſerved, and is in Law called an occupant (occupans) becauſe his Title is by his firſt occupation. And ſo if Tenant for his own life grant over his Eſtate to another, if the Grantee dieth, there ſhall be an Occupant. In like manner it is of an Eſtate created by Law; for if Tenant by the Curteſie, or Tenant in Dower grant over his or her Eſtate, and the Grantee dieth, there ſhall be an Occupans. But againſt the King there ſhall be no Occupant, becauſe nullum tempus occurrit Regi. And therefore no man ſhall gain the Kings Land by priority of Entry. There can be no Occupant of any thing that lieth in Grant, and that cannot paſs without Deed, becauſe every Occupant muſt claim by a Que eſtate, and averre the life of Ce' que vie. It were (c) good to prevent the incertainty of the Eſtate of the Occupant to add theſe words, (to have and to hold to him and his heirs during the life of Ce' que vie) and this ſhall prevent the Occupant, and yet the Leſſee may aſſign it to whom he will; or if he hath already an Eſtate for another mans life without theſe words, then it were good for him to aſſign his Eſtate to divers men and their heirs during the life of Ce' que vie.

(a) Vide le Deane de Worceſt. caſe, lib.6. fol.37. 27 Aſſ.31. 39 E. 3. 1. 27 H.6. Recognizance. Statham Pl. ultimo. 38 H. 6. 27. Bracton lib.2. fol.9. Britton fol. 84.85.

(b) 27 Aſſ. p. 31. & Pl. Com. fol. 28. b. in Colthirſt. caſe. tit. Barre 303.

(c) Littleton 167. 11 H.4.42. 27 E. 3. 48. 39 E.3.25. 7 H.4.46. 8 H.4.13. Dyer 8 Eliz. 253.

Note, that (d) to every Tenant for life, the Law as incident to his Eſtate without proviſion of the party giveth him three kind of Eſtovers, (that is) Housbote which is twofold, viz. Eſtoverium ædificandi & ardendi. Ploughbote, that is, Eſtoverium arandi. And laſtly, Haybote, and that is, Eſtoverium claudendi. And theſe Eſtovers muſt be reaſonable, Eſtoveria rationabilia. And theſe the Leſſee may take upon the Land demiſed without any aſſignment, unleſs he be reſtrained by ſpecial Covenant, for modus & conventio vincunt legem. Bote in the Saxon Tongue, and Eſtovers in the French in this caſe are all of one ſignification, that is, to have compenſation or ſatisfaction for theſe purpoſes. Eſtovers cometh of the French word Eſtover. And the ſame Eſtovers that Tenant for life may have, Tenant for years ſhall have.

(d) Brack. lib.4.fol. 222. 231,232, & Vid. fol.136,137. Fleta lib.4. cap. 19, 25,26, 27. 8 E. 3.54.55. 21 E.3. 41. 48 E.3.31. 7 E.4.28. 21 H.6.46. 10 E. 4. 3. F. N. B. 180. lib.4.86,87. in Luttrels Caſe.

Vide Sect. 381.

You have perceived, That our Author divides Tenant for life into two branches, viz. into Tenant for term of his own life, and into Tenant for term of another mans life: to this may be added a third, viz. into an Eſtate both for term of his own life, and for term of another mans life.

Roſſes Caſe, lib.5. fol.13.

As if a Leaſe be made to A. to have to him for term of his own life, and the lives of B. and C. for the Leſſee in this caſe hath but one Freehold, which hath his limitation; During his own life, and during the lives of two others. And herein is a diverſity to be obſerved between ſeveral Eſtates in ſeveral degrees, and one Eſtate with ſeveral limitations. For in the firſt, an Eſtate for a mans own life is higher than for another mans life; but in the ſecond it is not. As if A. be Tenant for life, the remainder or reverſion to B. for life, A. may ſurrender to B.

for

for the eſtate of B. for term of his own life, is higher than an eſtate for another mans life: And therefore if Tenant for life infeoffe him in the remainder for life, this is a ſurrender, and no forfeiture. And albeit an eſtate for term of a mans own life be but one freehold, yet may ſeveral freeholds in certain caſes be derived out of the ſame, whereof our books are very plentiful, and wherewith you may diſpoſe your ſelves for a time. As if Tenant for life maketh a leaſe by deed, or without deed, to him in the remainder, or reverſion, in tail or in fee for the term of the life of him in the rem, or reverſion, & after he in the remainder taketh wife and dieth, his wife ſhal not be endowed, for Tenant for life ſhal enjoy the land again, for forfeiture it cannot be; for he in the rem, was party; & ſurrender it cannot be, for that his whole eſtate was not given. 24 E. 3. 32. & 68. 30 Aſſ. p. 47. 19 E. 3. Sur. 8.

The heir maketh a leaſe for life, reſerving a rent, againſt whom the wife recovereth her Dower and dieth, the Leſſee ſhall have the land again for his life, and the rent is revived. 13 R 2. Dower 95. 7 H. 6. 3. per Cur. 18 E. 3. 48.

Note this, if Tenant for life take husband, and by deed indented, they make a leaſe to him in the reverſion for the life of the husband, reſerving a rent; this is neither forfeiture, nor abſolute ſurrender, for the cauſe aforeſaid, and the reſervation is good. 7 H. 5. 4.

B. ſeiſed of lands in fee, taketh a wife If. and infeoffe C. in fee, who taketh Alice to wife: C. dieth, Alice is endowed; B. dieth, If. recovereth Dower againſt Alice and dieth, Alice ſhall enjoy the land again during her life. 29 Aſſ. p. 64. 8 E. 2. Aſſ. 393. 45 E. 3. 13.

A. and (a) B. Joynt-tenants, A. for life, and B in fee, joyn in a leaſe for life, A. hath a Reverſion, and ſhall joyn in an Action of Waſte. (a) 2 H. 5. 7. 13 H. 7. 15. 18 E. 2. Br. 835. F. N. B. 59. f.

Tenant for (b) life, and he in the Reverſion joyn in a leaſe for life; it is ſaid that they ſhall joyn in an Action of Waſte, and that the Leſſee for life ſhall recover the place waſted, and he in Reverſion, Damages. (b) 27 H. 8. 13. 13 H. 7. 15. 22 H. 6. 24. 17 E. 3. 3. b. (c) 37 H. 6. 27. 26 E. 3. 69. 14 E. 2. Grant. 92.

If a man grant (c) an eſtate to woman dum ſola fuit, or durante viduitate or quam diu ſe bene geſſerit, or to a man and a woman during the coverture, or as long as the Grantee dwell in ſuch a houſe, or ſo long as he pay x. l. &c. or until the Grantee be promoted to a Benefice, or for any like incertain time, which time, as Bracton ſaith, is tempus indeterminatum: In all theſe caſes, if it be of lands or tenements, the leſſee hath in judgement of law an eſtate for life determinable, if livery be made; and if it be of Rents, advowſons, or any other thing that lie in grant, he hath a like eſtate for life by the delivery of the Deed, & in count and pleading he ſhall alleage the leaſe, and conclude that by force thereof he was ſeiſed generally for term of his life. 3 E. 3. 15. 14 H. 8. 13. Bracton lib. 4. fol. 207. Fleta lib. 3. cap. 12.

If a man make a leaſe of a Mannor, that at the time of the leaſe made is worth xx. l. per an. to another until C. l. be paid; in this caſe, becauſe the annual profits of the Mannor are incertain, he hath an eſtate for life, if livery be made determinable upon the levying of the C. l. But if a man grant a Rent of xx. l. per an. until C. l. be paid, there he hath an eſtate for five years; for there it is certain and depends upon not incertainty. And yet in ſome caſes a man ſhall have an incertain intereſt in lands or tenements, and yet neither an eſtate for life, for years, or at will. As if a man by his will in writing, deviſe his lands to his Executors for payment of debts, and until his debts be paid; in this caſe the Executors have but a Chattel, and an incertain intereſt in the land until his debts be paid; for if they ſhould have it for their lives, then by their death their eſtate ſhould ceaſe, and the debts unpaid: but being a Chattel, it ſhall go to the Executors of Executors for the payment of his debts; and ſo note a diverſity between a deviſe and a conveyance at the Common Law in his life time. And tenant by Statute merchant, by Statute ſtaple, and by Elegit, have incertain intereſts in lands or tenements; and yet they have but Chattels, and no freehold, whoſe eſtates are created by divers Acts of Parliament, whereof more ſhall be ſaid hereafter. And ſo have Gardians in Chivalry, which hold over for ſingle or double value incertain intereſts, and yet but Chattels. 33 Aſſ. p. 2. Lib. 8. fol. 9. Mannings caſe. 3 H. 7. 13. 27 H. 8. 5. 14 H. 8. 13. 12 Aſſ. p. 8.

If one grant lands or tenements, reverſions, remainders, rents, advowſons, commons, or the like, and expreſſe or limit no eſtate, the Leſſee or Grantee (due ceremonies requiſite by Law being performed) hath an eſtate for life: The ſame Law is of a declaration of a uſe. A man may have an eſtate for term of life determinable at will; As if the King doth grant an office to one at will, and grant a rent to him for the exerciſe of his office for term of his life, this is determinable upon the determination of the office. Vide ſect. 381. 7 Aſſ. Pl. 1. 13 El. Dyer 300. 7 E. 4. 23.

A. Tenant in fee ſimple make a leaſe of lands to B. to have and to hold to B. for term of life, without mentioning for whoſe life it ſhall be, it ſhall be deemed for term of the life of the Leſſee; for it ſhall be taken moſt ſtrongly againſt the Leſſor, and as hath been ſaid, an eſtate for a mans own life is higher than for the life of another. But if tenant in tail make ſuch a leaſe without expreſſing for whoſe life, this ſhall be taken but for the life of the Leſſor, for two reaſons. Vide ſect. 381.

Firſt, when the conſtruction of any Act is left to the Law, the Law which abhorreth injury and wrong will never ſo conſtrue it, as it ſhall work a wrong: and in this caſe, if by conſtruction it ſhould be for the life of the Leſſee, then ſhould the eſtate tail be diſcontinued, and a new reverſion gained by wrong: but if it be conſtrued for the life of the Tenant in tail, then no wrong is wrought. And it is a general rule, that whenſoever the words of a Deed, or of the parties without Deed may have a double intendment, and the one ſtandeth with Law and right,

4 E.2. Wast.11.17 E.3.7.

right, and the other is wrongful, and against Law, the intendment that standeth with Law shall be taken.

Secondly, The Law more respecteth a lesser estate by right, than a larger estate by wrong, as if Tenant for life in remainder disseise Tenant for life, now he hath a Fee simple; but if Tenant for life dy, now is his wrongful estate in fee by judgment in Law changed to a rightful estate for life.

19 H.6. 7 H.4.32. 6 E. 3.17. 7 E.3.66. 18 E.3. 60. 23 E.3.cap.1, &c. 1 H.4. 44. 38 E.3.23,24.

If a man retain a servant generally, without expressing any time, the Law shall construe it to be for one year, for that retainer is according to Law. Vide 23 E.3.cap.1, &c. To shut up this point, it hath been adjudged, that where Tenant in tail made a lease to another for term, of life generally, and after released to the Lessee and his heirs, albeit between the Tenant in tail, and him a Fee simple passed; yet after the death of the Lessee, the entry of the issue in tail was lawful; which could not be, if it had been a lease for life of the Lessee, for then by the release it had been a discontinuance executed. But let us now return to Littleton.

Sect. 57.

¶ This and the rest that follow in this chapter, concerning the description of the Feoffor and Feoffee, Donor and Donee, and Lessor and Lessee, are evident.

¶ *Et est ascavoir que il y ad le Feoffor, & le Feoffee, &c.* Vide Sect. 2. Where a light touch is given who may purchase. Now somewhat is to be said, who have ability to enfeoffe, &c. and may be a Feoffor, Donor, Lessor, &c. Whosoever is disabled by the Common Law to take, is disabled to infeoffe, &c. But many that have capacity to take, have no ability to infeoffe, &c. As men attainted of Treason, Felony, or of a Præmunire, Aliens born, the Kings Villains, Traitors, Felons, &c. he that hath offended against the Statutes of Præmunire, after the offences committed, if attainders ensue. Ideots, madmen, a man deaf, dumb, and blind from his Nativity, a Feme Covert, an Infant, a man by dures: for the feoffments, &c. of these may be avoided. But an Heretick, though he be convicted of heresie, a Leper removed by the Kings writ from the society of men; Bastards, a man deaf, dumb, or blind; so that he hath understanding and sound memory, albeit he expresse his intention by signs, Villain of a common

Bracton lib.5. fol.415. Britton fol.88. Fleta lib.3. cap.3. & lib.6. cap. 39,40.

2 H.5. cap. 7. which is repealed. Doct. and Stud. lib.2. cap.29.

¶ Et est ascavoir que il y ad le Feoffor & le Feoffée, Donor & le Donée, le Lessor & le Lessée. Le Feoffor est proprement lou home enfeoffa un auter en ascuns terres ou tenements en fee simple, celuy que fist le feoffment est appel feoffour, & celuy a que le feoffment est fait, est appel, feoffée. Et le Donour est proprement lou un home done certaine terres ou tenements a un auter en le taile, celuy que fist le done est appel le Donor, & celuy a que le done est fait, est appel le Donée. Et le Lessor est proprement lou un home lessa a un auter certain terres ou tenements pur terme de vie, ou per terme des ans, ou a tener a volunt: celuy que fist le leas est appel les-

And it is to be understood, that there is Feoffor and Feoffee, Donor, and Donee, Lessor and Lessee. Feoffor is properly where a man enfeoffes another in any Lands or tenements in Fee simple; he which maketh the feoffment, is called the Feoffor, and he to whom the Feoffment is made, is called the Feoffee. And the Donor is properly where a man giveth certain lands and tenements to another in tail; he which maketh the gift, is called the Donor, & he to whom the gift is made, is called the Donee. And the Lessor is properly where a man letteth to another lands or tenements for term of life, or for term of years, or to hold at will; He which maketh the lease, is called Lessor, for

ſoꝛ ꝑ celuy a que le leas eſt fait, eſt appel Leſſee. Et theſcun que ad eſtate en aſcun terres ou tenements pur terme de ſa vie ou pur terme dauter vie, eſt appel Tenant de Franktenement, ꝑ nul auter de meindre eſtate poit aver Franktenement, mes ceux de greinder eſtate ont Frantement car ceſtuy en Fee ſimple ad Franktenement ꝑ celuy en le taile ad franktenement, &c.

and he to whom the Leaſe is made, is called Leſſee. And every one which hath an Eſtate in any Land or Tenements for terme of his own or another mans life, is called Tenant of Freehold: and none other of a leſſer Eſtate can have a Freehold, but they of a greater Eſtate have a Freehold; For he in Fee ſimple hath a Freehold, and Tenant in taile hath a Freehold, &c.

no feodi ſervitium ei debitum quod pertinet ad feodum illud. Upon which Act I have heard great queſtion (d) made, whether the feoffment made againſt that ſtatute were voidable or no, and ſome have ſaid that the ſtatute intended not to avoid the Feoffment, but implicitè to direct the tenure, viz. that the Tenant ſhould not infeoff another of parcel to hold of the chief Lord (that is of the next Lord) but to hold of himſelf, and then the Lord may diſtrein in every part for his whole ſervice without any prejudice unto him. But this opinion is againſt (e) the authority of our Books, and againſt the ſaid ſtatute of Magna Charta. For, firſt it is agreed in 10 H.7. that as well before the ſtatute as after, a Tenant which held two acres might have aliened one of the acres to hold of him, and notwithſtanding the Lord might have diſtreined in which of the acres he would for his whole ſervices: and reaſon teacheth that before that ſtatute a Tenant could not have aliened parcel to hold of the chief Lord; For the Seigniory of the Lord was entire, for the which the Lord might diſtrein in the whole or in any part, and which the Tenant by his own Act cannot divide to the prejudice of the Lord to bar him to diſtrein in any part for his Services, as he ſhould do, if he ſhould infeoff another of parcel to hold of the chief Lord. But the Tenant might have made a Feoffment of the whole to hold of the chief Lord, for there no prejudice inſued to the Lord. Others have ſaid, and they ſaid truly, that the intention of the ſtatute was that the Tenant could not alien parcel (which might turn to the prejudice of the Lord) without his aſſent, and this appeareth clearly by the Mirror. And by this ſtatute the King took benefit to have a Fine for his Licenſe, before which ſtatute no Fine for alienation was due to the King. For it is (f) adjudged that for an alienation in the time of Henry the ſecond, no Fine was due, and it appeareth in our Books, that if an alienation had been made before 20 H. 3. no Fine was due to the King for alienation: Now it is to be obſerved that oftentimes for the better underſtanding of our Books, the adviſed Reader muſt take light from Hiſtory and Chronicles eſpecially for diſtinction of times. And therefore Matthew Paris (who in his Chronicles reciteth Magna Charta) teſtifieth that King Henry the third by evil counſel (and eſpecially, as the truth was, of Hubert de Burgo then Chief Juſtice) ſought to avoid the great Charter firſt granted by his father King John, and afterward granted and confirmed by himſelf in the ninth of Henry the third, for that as he ſaid King John did grant it by Dures, and that he himſelf was within age when he granted and confirmed it. But foraſmuch as afterwards the ſaid King Henry the third in the twentieth year of his Reign, at what time he was nine and twenty years old, did grant and confirm the ſaid great Charter, for that cauſe to put out all ſcruples in the twentieth year of Henry the third named, albeit in Law the Kings Charter granted in the ninth year of Henry the third, was of force and validity notwithſtanding his nonage, for that in judgment of Law the King, as King, cannot be ſaid to be a Mi-

perſon before entry or the like may infeoff, &c.

(a) All Feoffments, Gifts, Grants, and Leaſes by Biſhops, albeit they be confirmed by the Dean and Chapter by any of the Colledges or Halls in either of the Univerſities or elſewhere. Deans & Chapters, Maſter or Gardian of any Hoſpital, Parſon, Vicar, or any other having Spirituall or Eccleſiaſticall living, are alſo to be avoided, (b) and all the ſaid bodies politick or corporate, are by the ſtatutes of the Realm diſabled to make any conveyances to the King, or to any other, as it hath been adjudged: which ſtatutes have been made ſince Littleton wrote.

(a) 32 H.8. cap.28. 1 El. not printed. 1 El. cap.10. 14 El. ca.11. 18 El. ca.20. Ja. ca.

(b) Lib.4. fo.76.120. lib.5. fol.6.14. lib.6.fo,37. lib.11. fo.67. Magdalen College Caſe. Vide Leſt. de W. 2. cap. 41.

It is provided (c) by the Statute of Magna Carta, quod nullus liber homo det de cætero amplius alicui de terra ſua, quam ut de reſiduo terræ ſuæ poſſet ſufficienè fieri domi-

(c) Magna Charta ca.32. Mirror cap.5. ſect. 2. Glanvil.lib.7. cap.1. Bract. lib.1. Brit.88,&c. Fleta lib.3. cap.3.

(d) Vide an excellent declaration hereof inter adjudicat. coram Rege-Trin.E.1. fol.2. in Theſaur. Nort. & Derb.

(e) Bract. lib.1. 10 H.7. fol.10. b. 33 E.3. Avowry 255. Stanf. Prer. fol. 29. 8 E. 4. 12.

Mirror cap.5. ſect. 2. Fleta lib.3. cap.3.

(f) 26 Aſſ. p.37. 20 Aſſ. p. 17. 20 E.3. avowr.126. 34 E.3.c.15. Vide Stanf. 29.30. Matr. Paris. Walſingham 37. 39.

Vide 5 H.3. Mordanc. 53. Magna Charta there vouched, which was the Charter of King John, for it was cited before 9 H. 3.

nor, for when the Royall body Politick of the King doth meet with the natural capacity in one person, the whole body shall have the quality of the Royal Politick, which is the greater and more worthy, and wherein is no minority. For, Omne majus trahit ad se quod est minus. And it is to be observed, that no Record can be found, that either a license of alienation was sued, or pardon for alienation was obtained, for an alienation without license at any time before the twentieth year of Henry the third, and it is holden in the twentieth of Edward the third, that a license for alienation grew from this statute.

20 Ass.Pl.17. by Skipwith.

Now in case of a common person it was the common opinion, that if the Tenant had alienated any person contrary to the said Act, that he himself was bound by his own Act, but that his heir might have avoided it, and in the Kings case many held the same opinion. For Britton saith. Ne Countes, ne Barons, ne Chivaler, ne Serjeants, que reignont en chiefe de nous ne purl' my dismember nous fees sauns licence, que nous ne puissent per droit engettre les purchasors, &c, And herewith agreeth Fleta, and our Books. But now by the statute 1 E. 3. cap. 12, and 34 E. 3. cap. 15. although the Kings Tenant in chief or by Grand Serjeanty do alien all or any part without license, yet is there not any forfeiture of the same, but a reasonable fine therefore to be paid. And note, it appeareth by the preamble in 1 E. 3. that complaint was made that Land holden of the King in Capite, being alienen without license, was seised as forfeited. And in the case of a common person, the statute of 18 E.1. De quia emptores terrarum hath made it clear, for this hath in effect as to the common persons taken away the said statute of Magna Charta, cap.32. for thereby it is provided, Quod liceat unicuique libero homini terras suas seu tenementa sua, seu partem inde ad voluntatem suam vendere, ita quod feoffatus teneat, &c. de Capitali Domino. And herein are divers notable points to be observed. First, that this word liceat proveth that the Tenant could not, or at least wayes was in danger to alien parcell of his Tenancy, &c. upon the said Act of Magna Charta. Secondly, that upon the feoffment of the whole, the Tenant shall hold of the chief Lord. Thirdly, that the Tenant might infeoff one of part to hold pro particula of the chief Lord. But this Act (the King being not named) doth not take away the Kings fine due unto him by the statute of Magna Charta.

Brit. fo.28.88,186,187, 245,247. Prer. Regis ca.7. Fleta lib.6. cap.29.acc. 20 E.3. Ass.122. 29 Ass.pl. 19.14 E 3. Quare Imp.45. 14 H.4.2,3. 9 E.3. fo.26. 1 E.3.c.12. 34 E.3. c.15. lib.2. fo.81,82. in Seignior Cromwel's Case.

Regist. int. les breves de onerand. pro rata portione.

¶ *Franktenement.* Here it appeareth that Tenant in Fee, Tenant in Taile, and Tenant for life, are said to have a Franktenement, a Freehold so called, because it doth distinguish it from terms of years, Chattels upon incertain interests, Lands in Villenage or Customary, or Copyhold Lands. Liberum autem tenementum dicitur ad differentiam Villenagii, & villanorum qui tenent Villenagium, quia non habent actionem nec assisam, &c. item quod sit suum & non alienum, hoc est si teneat nomine alieno ut firmarius & ad terminum vel sicut creditor ad vadium. And note that Tenant by statute Merchant, statute Staple, or Elegit are said to hold Land Ut liberum Tenementum, until their debt be paid, and yet in troth they (as hath been said) have no Freehold but a Chattle, which shall go to the Executors, and the Executors also if they be ousted shall have an assise. But (ut) is similitudinary, because they shall by the statutes have an assise as Tenant of the Freehold shall have, and to that respect hath a similitude of a Freehold, but Nullum simile est idem.

Bracton. lib.4. fo.224. Britton cap.32,& 47. Bracton lib.4. to.22. Regist. Judic.68.73.

28 Ass.p.7. W.2. cap.18. Stat. de Mercatoribus an. 13 E.1. 27 E.3. cap.9. 23 H.8. cap.6. F.N.B. 178. 7.

Chap. 7. *Sect.* 58.

Tenant for terme of years.

¶ *Lou home lessa terres, &c. Lessa,* and Lease is (a) derived of the Saxon word Leapum, or Leasum, for that the Lessee commeth in by lawfull means (b) and dimittere is in French laysser to depart with, or forgoe.

(a) Mirrour cap.2. sect.17. Bracton lib.2. cap.26,& lib.4. fol.220. Fleta lib.3. cap.12, & lib.5. cap.34.
(b) For the word (dimitto) see Sect. 531.

¶ Tenant pur terme dans è lou home lessa terres ou Tenements a un auter pur terme de certaine ans solonque le number des ans que est accord perenter de Les-

¶ Tenant for terme of yeares is, where a man letteth Lands or Tenements to another for terme of certaine yeares, after the number of yeares that is accorded between the

for

ſoꝛ q̄ le Leſſee. Et quant le Leſſee enter pur force del leas, donque il eſt Tenant pur terme des ans. Et ſi le Leſſoꝛ en tiel caſe reſerve a luy un annuall rent ſur tiel leas il poit eſlier a diſtrainer pur le rent en les tenements leſſes, ou il poit aver un action de debt pur les arrerages enverz le Leſſee. Mes en tiel caſe il covient que le Leſſoꝛ ſoit ſeiſie de meſmes les tenemẽts al temps del leas, car il eſt bone plee pur le Leſſee a dire, q̄ le Leſſoꝛ navoit riens en les tenements al tẽps de le leas, ſi non que le leas ſoit fait per fait endent, en quel caſe tiel plee donque ne giſt en le bouch le Leſſee a pleader.

Leſſor and the Leſſee, and when the Leſſee entreth by force of the Leaſe, then is he Tenant for term of years, and if the Leſſor in ſuch caſe reſerve to him a yearly Rent upon ſuch Leaſe, he may chuſe for to diſtrain for the Rent in the Tenements letten, or elſe he may have an Action of Debt for the Arrearages againſt the Leſſee. But in ſuch caſe it behoveth that the Leſſor be ſeiſed in the ſame tenements at the time of this Leaſe, for it is a good plee for the Leſſee to ſay, that the Leſſor had nothing in the tenements at the time of the leaſe, except the leaſe be made by Deed indented, in which caſe ſuch Plea lieth not for the Leſſee to plead.

lives at their will and pleaſure, which now cannot make them firm in Law. And ſome perſons may now make leaſes for years, or for life or lives (obſerving due incidents) firm and good in Law; who of themſelves could not ſo do when Littleton wrote, and this by force of divers Acts of Parliament (c) as namely 32 H.8. 1 Eliz. 13 Eliz. 18. Eliz. and 1 Jac. Regis, of which Statutes one is enabling, and the reſt are diſabling. When Littleton wrote, Biſhops with the confirmation of the Dean and Chapter, Maſter and Fellows of any Colledge, Deans and Chapters, Maſter or Gardian of any Hoſpital, and his Brethren, Parſon or Vicar with the conſent of the Patron and Ordinary, Archdeacon, Prebend, or any other body Politique, Spirituall and Eccleſiaſtical (Concurrentibus his quæ in jure requiruntur) might have made Leaſes for lives or years without limitation or ſtint. And ſo might they have made gifts in tail or ſtates in Fee at their will and pleaſure, wherupon not onely great decay of Divine Service, but Dilapidations and other inconvenienties enſued, and therefore they were diſabled and reſtrained by the ſaid Acts of 1 Eliz. 13 Eliz. and 3 Jac. Regis to make any State or Conveyance to the King at all, or to the ſubject, but there is

(c) 32 H.8. ca.28. 1 Eliz. not printed but in the Abridgment. 13 Eliz. ca.10. 18 Eliz. cap.6. 1 Jac. cap.3.

Lib.5. fol.14. caſe de Eccleſiaſtical perſons. Lib.11. fol.66. Magdalen Colledge caſe. Leveſque de Sarums caſe. lib.10. fol.60,61.

excepted out of the reſtraint or diſability, Leaſes for three lives, or one and twenty years, with ſuch reſervation of Rent, and with ſuch other proviſions and limitations as hereafter ſhall appear. Alſo they may make grants of ancient offices of neceſſity with ancient Fees. Concurrentibus his quæ in jure requiruntur, for theſe grants are not within the ſtatute of 32 H.8. but by conſtruction, they are not reſtrained by the ſtatutes of 1 Eliz. or 13 Eliz. becauſe theſe ancient offices be of neceſſity, and with the ancient fees, and ſo no diminution of revenue.

There be three kinds of perſons that at this day may make leaſes for three lives, &c. in ſuch form as hereafter is expreſſed, which could not ſo do when Littleton wrote, viz. Firſt, any perſon ſeiſed of an eſtate tail in his own right. Secondly, any perſon ſeiſed of any eſtate in Fee ſimple in the right of his Church. Thirdly, any husband and wife ſeiſed of any eſtate of inheritance in Fee ſimple or Fee Tail in the right of his wife, or joyntly with his wife before the Coverture or after, viz. the Tenant in tail by Deed to bind his iſſues in Tail, but not the reverſion or remainder, the Biſhop, &c. by Deed without the Dean and Chapter to bind his Succeſſours, the husband and wife by Deed bind the wife and her and their heirs and theſe are made good by the ſtatute of 32 H.8. which enableth them thereunto. But to the making good of ſuch leaſes by the ſaid ſtatute, there are nine things neceſſarily to be obſerved belonging to them all, and ſome other to ſome of them in particular.

Firſt, the leaſe muſt be made by Deed indented, and not by Deed Poll or by Bayoll.

Secondly, it muſt be made to begin from the day of the making thereof, or from the making thereof.

Lib.5. fol.6 Seig. Mountjoyes caſe.

Lib. 5. fol. 2. Elmers caſe.

Thirdly, If there be an old leaſe in being, it muſt be ſurrendred or expired, or ended within a year of the making of the leaſe, and the ſurrender muſt be abſolute and not conditional.

Fourthly, There muſt not be a double leaſe in being at one time, as if a leaſe for years be made according to the Statute, he in the reverſion cannot expulſe the Leſſee, and make a Leaſe for life or lives according to the ſtatute, nor è converſo, for the words of the ſtatute be, to make a Leaſe for three lives, or one and twenty years, ſo as one of the other may be made, and not both.

Fifthly, It muſt not exceed three lives, or one and twenty years from the making of it, but it may be for a leſſer term or fewer lives.

(d) Lib. 5. fol. 2. Jewels caſe. 17 E. 3. 75. 9 Aſſ. 24. 14 E. 3. Scire facias 22. 10 H. 6. 2. 3 H. 6. 21.

Sixthly, It muſt be of Lands, Tenements, or Hereditaments, manurable or corporeal, which are neceſſary to be letten, and whereout a rent by Law may be reſerved, and not (d) of things that lie in grant, as Advowſons, Fairs, Markets, Franchiſes, and the like, whereout a rent cannot be reſerved.

(e) Lib. 6. fol. 37. Deane and Chapter of Worceſters caſe.

Seventhly, It muſt be of Lands or Tenements, which have moſt commonly been letten to farm, or occupied by the farmers thereof by the ſpace of 20 years next before the leaſe made, ſo as if it be letten for 11 years at one or ſeveral times within thoſe 20 years it is ſufficient. A grant (e) by copy of Court roll in fee for life or years is a ſufficient letting to farm within this ſtatute, for he is but a Tenant at will according to that cuſtom, and ſo it is of a leaſe at will by the Common Law, but thoſe lettings to farm muſt be made by ſome ſeiſed of an eſtate of inheritance & not by a Gardian in chivalry, tenant by the curteſy, tenant in dower, or the like.

Lib. 5. fol. 6. Seignior Mountjoyes caſe.

Eightly, That upon every ſuch leaſe there be reſerved yearly during the ſame leaſe due and payable to the Leſſors, their heirs and ſucceſſors, &c. ſo much yearly farm Rent, or more, as hath been moſt accuſtomably yielded or paid for the lands, &c. within twenty years next before ſuch leaſe made. Hereby firſt it appeareth (as hath been ſaid) that nothing can be demiſed by authority of this Act, but that whereout a Rent may be lawfully reſerved. Secondly, That where not only a yearly rent was formerly reſerved, but things not annual, as heriots, or any fine or other profit at or upon the death of the Farmor, yet if the yearly rent be reſerved upon a leaſe made by force of this ſtatute, it ſufficeth by the expreſs words of the Act. Thirdly, If he reſerve more than the accuſtomable Rent, it is good alſo by the expreſs letter of the Act; but if twenty acres of land have been accuſtomably letten, and a leaſe is made of thoſe twenty, and of one acre which was not accuſtomably letten, reſerving the accuſtomable yearly Rent, and ſo much more as exceeds the value of the other acre, this leaſe is not warranted by the Act, for that the accuſtomable Rent is not reſerved, ſeeing part was not accuſtomably letten, & the Rent iſſueth out of the whole. Fourthly, if Tenant in Tail let part of the land accuſtomably letten, and reſerve a Rent pro rata, or more, this is good, for that is in ſubſtance the accuſtomable Rent. Fifthly, If two Coparceners be Tenants in Tail of twenty acres every one of equal value, and accuſtomably letten, and they make partition, ſo as each have ten acres, they may make leaſes of their ſeveral parts, each of them reſerving the half of the accuſtomable Rent. Sixthly, if the accuſtomable Rent had been payable at four dayes or feaſts of the year, yet if it be reſerved yearly payable at one Feaſt, it is ſufficient, for the words of the ſtatute be reſerved yearly.

Lib. 6. fol. 37, 38. Deane and Chapter of Worceſters caſe.

Lib. 5. fol. 5. Seignior Mountjoyes caſe, lib. 6. fol. 37.

Lord Mountjoyes caſe, ubi ſupra.

Ninthly, nor to any leaſe to be made without impeachment of waſte, therefore if a leaſe be made for life, the remainder for life, &c. this is not warranted by the ſtatute, becauſe it is diſpunishable of waſte. But if a leaſe be made to one during three lives, this is good; for the occupant, if any happen, ſhall be puniſhed for waſte. The words of the ſtatute be (ſeiſed in the right of his Church) yet a Biſhop that is ſeiſed jure Epiſcopatus, a Dean of his ſole poſſeſſions in jure Decanatus, an Archdeacon in jure Archi-diaconatus, a Prebendary and the like are within the ſtatute, for every of them generally is ſeiſed in jure Eccleſiæ.

Deane and Chapter of Worc. caſe, ubi ſupra.

Deane and Chapter of Worc. caſe, ubi ſupra.

But a Parſon and Vicar are excepted out of the ſtatute of 32 H. 8. and therefore if either of them make a leaſe for three lives, &c. of lands accuſtomably letten, reſerving the accuſtomed Rent, it muſt be alſo confirmed by the Patron and Ordinary, becauſe it is excepted out of 32 H. 8. and not reſtrained by the ſtatutes of primo or 13 Eliz. And what hath been ſaid concerning a leaſe for three lives, doth hold for a leaſe for one and twenty years.

3 E. 6. 1 Mar. tit. Leaſes, Bre. 62.

Thus much ſhall ſuffice to have ſpoken of the inabling ſtatute of 32 H. 8. the better to inable the Reader to underſtand both this and that which follows. Now to ſpeak ſomewhat of the diſabling ſtatutes of 1 Eliz. and 13 Eliz. the words of the exception out of the reſtraint and diſability of 1 Eliz. are, Other then for the term of twenty one years, or three lives, from ſuch time as any ſuch grant or aſſurance ſhall be given, whereupon the old and accuſtomed yearly rent, or more, ſhall be reſerved: And to that effect is the exception in the ſtatute of 13 Eliz. Firſt, it is to be underſtood, that neither of theſe diſabling Acts, nor any other, do in any ſort alter or change the inabling ſtatute of 32 H. 8. but leaveth it for a pattern in many things for leaſes to be made by others. Secondly, It is to be known, that no leaſe made according to the exception of 1 Eliz. or 13 Eliz. and not warranted by the ſtatute of 32 H. 8. if it be made

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by a Biſhop or any ſole Corporation, but it muſt be confirmed by the Deans and Chapters, or others that have intereſt, as hath been ſaid in the caſe of the Parſon and Vicar. but examples do illuſtrate. If a Biſhop make a Leaſe for one and twenty years, and all thoſe years being ſpent ſaving three or more, yet may the Biſhop make a new Leaſe to another for twenty one years, to begin from the making, according to the exception of the ſtatute, but not a Leaſe for life or lives, as hath been ſaid, and this concurrent Leaſe hath been reſolved to be good, as well upon the exception of 1 Eliz. in the caſe of Biſhops, as upon 13 Eliz. which extend to ſpiritual and eccleſiaſtical Corporations, aggregate of many, as Deans and Chapters, &c. which 32 H.8. did not: but in the caſe of the concurrent Leaſe, in the caſe of the Biſhop it muſt be confirmed. Alſo the exception of 1 Eliz. & 13 Eliz. doth differ from the ſtatute of 32 H. 8. for the Leaſes for years to be made according to the exceptions of the ſtatutes of 1 and 13 Eliz. muſt begin from the making and not from the day of the making, but by force of 32 H. 8. from the day of the making. And although the ſtatutes of the firſt or thirtenth of Eliz. do not appoint the Leaſe to be made by writing, yet muſt it therein and in the other eight properties or qualities before mentioned and required by 32 H.8. follow the pattern thereof (the concurrent Leaſe only except.) Although the exception in 1 and 13 Eliz. concerning the accuſtomed Rent is more general than that of 32 H. 8. and there is not any proviſion for Leaſes made diſpuniſhable of waſte, &c. yet muſt that pattern of 32 H.8. be followed: for Leaſes without impeachment of waſte made by ſuch Spiritual and Eccleſiaſtical perſons are unreaſonable & cauſes of dilapidations. Thus much have I thought good to lead the ſtudious Reader by the hand, & to conduct him in the right way. And to put all theſe things together upon conſideration had of all the ſtatutes, which otherwiſe might have prima facie ſeemed to him a diffuſe and dark Labyrinth. And albeit it be provided by the ſaid Acts of 1 and 13 Eliz. that all Grants, &c. Leaſes, &c. made, &c. (other than Leaſes for three lives, or one and twenty years according to thoſe Acts) ſhould be utterly void and of none effect, to all intents, conſtructions, and purpoſes, yet Grants, or Leaſes, &c. not warranted by thoſe Acts are not void, but good againſt the Leſſor if it be a ſole Corporation, or ſo long as the Dean or other head of the Corporation remain, if it be a Corporation aggregate of many, for the ſtatute was made in benefit of the Succeſſor. But let us now return to our Author.

Lib.3. fo.59,60. Lincolne College Caſe, P.39. Eliz. inter Hunt and Singleton, ibidem.

¶ *Home leſſa.* Here Littleton putteth this caſe where one letteth, &c. It is therefore neceſſary to be ſeen what the Law is where divers joyn in a Leaſe. If the Tenant of the Land, and a ſtranger which hath nothing in the Land, joyn in a Leaſe for years by Deed indented of one and the ſelf ſame Land, this is the Leaſe of the Tenant only, and the confirmation of the ſtranger, and yet the Leaſe as to the ſtranger works by concluſion.

Vide ſect.346. 11 H.4.1. 5 E.4.4.2. 27 H. 8.16.

If two ſeveral Tenants of ſeveral Lands joyn in a Leaſe for years by Deed indented, theſe be ſeveral Leaſes and ſeveral Confirmations of each of them, from whom no intereſt paſſeth, and work not by way of concluſion in any ſort, becauſe ſeveral intereſts paſs from them. B. Tenant for life of C. and he in the remainder or reverſion in Fee, having ſeveral Eſtates in one and the ſame Land, joyn in a Leaſe for years by Deed indented, this Demiſe ſhall work in this ſort during the life of C. it is the Leaſe of B. and confirmation of him in the reverſion or remainder, and after the deceaſe of C. it is the Leaſe of him in the Reverſion or Remainder, and the Confirmation of B. for ſeeing the Leſſors have ſeveral Eſtates, the Law ſhall conſtrue the Leaſe to move out of both their Eſtates reſpectively, and every one to let that which he lawfully may let, and not to be the Leaſe only of Tenant for life, and the Confirmation of him in the Remainder or Reverſion; neither is there any concluſion in this caſe, as ſhall be ſaid hereafter. Tenant for life, and he in the Remainder in Fee, made a Leaſe for years by Deed indented, the Leſſee was ejected, and brought an ejectione firmæ, and declared upon a Demiſe made by Tenant for life and him in the Remainder, and upon not guilty pleaded, this ſpecial matter was found, and that Tenant for life was living, and it was adjudged (a) againſt the Pl. for during the life of the Tenant (as hath been ſaid) it is the Leaſe of the Tenant for life, & therefore during his life he ought to have declared of a Leaſe made by him, and after his deceaſe he ought to declare of a Leaſe made by him in remainder. (b) And the Deed indented could be no Eſtoppel in this caſe, becauſe there paſſed an intereſt from them both. And whenſoever any intereſt paſſeth from the party, there can be no Eſtoppel againſt him, and (c) ſo it was adjudged. Hereby you ſhall underſtand your Books the better which treat of thoſe matters, and accordingly it was adjudged that where Tenant in Tail, and he in the remainder in Fee joyned in a Grant of a Rent charge by Deed in fee, and after Tenant in Tail died without iſſue, the Grantee diſtrained and avowed by force of a Grant from him in the Remainder, and upon non conceſſit, the Jury found the ſpecial matter, and it was adjudged for the Avowant; for every one granted according to his Eſtate and intereſt.

(a) 27 H.8.f. 13.2.13 H.7.14. 2 H.5.7. Lib.1. fo.76. Bredon's Caſe.

(b) Mich.36, & 37 Eliz. in the Kings Bench. Vide Mich.6 & 7 Eliz. Dyer 234, 235.

(c) Hil. 44 Eliz.Rot. 14.59. in communi Banco inter Ellice & Cown.

Leaſes for lives or years are of three natures: ſome be good in Law, ſome be voidable by

entry, and ſome void without entry. Of ſuch as be good in Law, ſome be good at the Common Law as made by Tenant in Fee, whereof Littleton here putteth his caſe, ſome by act of Parliament, as Tenant in Tail, a Biſhop ſeiſed in Fee in the right of his Church alone without his Chapter, a man ſeiſed in Fee ſimple or Fee tail in the right of his Wife together with his Wife (as hath been ſaid) may by Deed indented make Leaſes for 21. years or 3. lives in ſuch manner and form as hath been ſaid and by the ſtatute (d) is limited; all which were voidable by the Common Law when Littleton wrote, and now are made good by Parliament.

(d) 32 H.8. cap.28.

An Infant ſeiſed of Land holden in Docage, may by Cuſtom make a Leaſe at his age of 15. years, and ſhall bind him, which Leaſe was voidable by the Common Law; Voidable, ſome by the Common Law, after the death of the Leſſor as of Tenant in Tail a Biſhop, &c. Or after the death of the Husband (intended of Leaſes not warranted by the ſaid ſtatute of 32 H.8.) Some voidable by Act of Parliament, as by a Biſhop though it be confirmed by Dean and Chapter if it be not warranted by the ſtatute of 32 H.8. and ſo of a Dean and Chapter after the death of the Dean, Some voidable at times by the Leſſor himſelf or his heirs, as by an Infant and the like. Some void in futuro. and ſome void in præſenti. In futuro, as if a Tenant in Tail make a Leaſe for years and dy without iſſue, it is void as to them in reverſion or remainder, though it be made (e) according to the ſaid ſtatute. If a Prebend, Parſon, or Vicar make a Leaſe for years, it is void by death; if it be not according to the ſtatutes. Otherwiſe it is of a Leaſe for life, for that is voidable. Et ſic de ſimilibus.

(e) 33 H.8. Dier lib. 3. fol. 59,60. in Lincolne College Caſe. Hunts Caſe vouched.

Some void in præſenti, as if one make a Leaſe for ſo many years as he ſhall live, this is void in præſenti for the incertainty. Et ſic in ſimilibus, whereof Littleton himſelf will teach you next and immediately, and I know you would now gladly hear him.

Pl. Com. Wroteſl. 198. 35 H.8. tit. Expoſition des parols 44. Lib.1. fo.145. in Davenports Caſe.

¶ *Pur terme.* Pro termino. Terminus in the underſtanding of the Law doth not onely ſignify the limits and limitation of time, but alſo the eſtate and intereſt that paſſeth for that time. As if a man make a Leaſe for 21 years, and after make a Leaſe to begin à fine & expiratione prædicti termini 21 annorum dimiſſ. and after the firſt Leaſe is ſurrendred, the ſecond Leaſe ſhall begin preſently, but if it had been to begin Poſt finem & expirationem prædict. 21 annorum, in that caſe although the firſt Term had been ſurrendred, yet the ſecond Leaſe ſhould not begin, till after the 21 years be ended by effluxion of time, and ſo note the diverſity between the Term for 21 years, and 21 years; and (f) herewith agreeth the Lord Pagets Caſe.

(f) Lib.1. fol.154. in the Rector of Chedington's Caſe.

(g) Words to make a Leaſe be, demiſe, grant, to farm let, betake, and whatſoever word amounteth to a Grant may ſerve to make a Leaſe. In the Kings caſe (g) this word Committo doth amount ſometime to a Grant as when he ſaith, Commiſſimus W. de B. officium Seneſchalciæ, &c. quamdiu nobis placuerit, and by that word he may make a Leaſe: and (i) therefore à fortiori a common perſon by that word may do the ſame.

(g) Vide Sect. 531.

(h) Regiſt. F.N.B. 270. e.

(i) 8 H. 6. 34.

¶ *De certaine ans:* For regularly in every Leaſe for years the Term muſt have a certain beginning, and a certain end, and herewith (k) agreeth Bracton, terminus annorum certus debet eſſe & determinatus. And Littleton is here to be underſtood firſt that the years muſt be certain when the Leaſe is to take effect in intereſt or poſſeſſion. For before it takes effect in poſſeſſion or intereſt, it may depend upon an incertainty, viz. upon a poſſible contingent before it begin in poſſeſſion or intereſt upon a limitation or condition ſubſequent. Secondly, albeit there appear no certainty of years in the Leaſe, yet if by reference to a certainty it may be made certain it ſufficeth. Quia id certum eſt quod certum reddi poteſt. For example of the firſt: If A. ſeiſed of Lands in Fee grant to B. that when B. pays to A. xx. ſhillings, that from thenceforth he ſhall have and occupy the Land for 21 years, and after B. pays the xx. ſhillings, this is a good Leaſe for 21 years from thenceforth. For the ſecond, if A. leaſeth his Land to B. for ſo many years as B. hath in the Mannor of Dale, and B. hath then a Term in the Mannor of Dale for 10. years, this is a good Leaſe by A. to B. of the Land of A. for 10 years. If the Parſon of D. make a Leaſe of his Glebe for ſo many years as he ſhall be Parſon there, this cannot be made certain by any means, for nothing is more uncertain than the time of death. Terminus vitæ eſt incertus, & licet nihil certius ſit morte, nihil tamen incertius eſt hora mortis. But if he make a Leaſe for three years, and ſo from three years to three years, ſo long as he ſhall be Parſon, this is a good Leaſe for ſix years, if he continue Parſon ſo long, firſt for three years, and after that for three years; and for the reſidue uncertain.

(k) 14 H.8.14. 3 Mar. Leaſes Br.67. 2 Mar. ibid. 67. Say and Fullers Caſe, Pl. Com.273. & Weldens Caſe, ibid. 4 H.6.12. 21 H. 7.38. Vid. le Caſe de leveque de Bathe, lib.6. fol. 34.35. Bract.lib.2. ca.9. Vid.lib. 1. fol.155,156. Rector de Chedington's Caſe.

Bract. lib.2. cap.9. So reſolved Hill.26. Eliz. Rot.655. in Com. Banco.

If a man maketh a Leaſe to I. S. for ſo many years as I. N. ſhall name, this at the beginning is incertain. But when I. N. hath named the years, then it is a good Leaſe for ſo many years.

A man maketh a Leaſe for 21 years, if I.S. live ſo long; this is a good Leaſe for years, and yet is certain in incertainty, for the life of I.S. is incertain. See many excellent caſes concerning this matter put in the ſaid caſe of the Biſhop of Bath and Wells. By the ancient Law of England for many reſpects a man could not have made a Leaſe above 40 years at the moſt, for

Pl. Com. Say and Fullers Caſe. Miror. ca.2. ſect. 17. & cap.5. ſect.1.

then

then was it ſaid that by long Leaſes many were prejudiced, and many times men diſherited: but that ancient Law is antiquated.

In the eye of the Law any Eſtate for life, being, as Littleton hath ſaid, an Eſtate of Freehold, againſt whom a præcipe quod reddat doth lye, is an higher and greater Eſtate than a Leaſe for years, though it be for a thouſand or more, which never are without ſuſpition of fraud, and they were the leſs valuable, for that at the Common Law they were ſubject unto, and under the power of the Tenant of the Freehold, the learning whereof ſtandeth thus, and is worthy to be known. When Littleton wrote, if a man had made a Leaſe for years by writing, and he that had the Freehold had ſuffered himſelf to be impleaded in a real Action by colluſion to bar the Leſſe of his Term and made default, &c. the ſtatute of Glouc' gave the Leſſee for years ſome remedy by way of receipt, and a triall whether the Demandant did move the plea by good right or colluſion; and if it were found by colluſion, then the Termor ſhould enjoy his term, and the execution of the judgment ſhould ſtay until after the Term ended. But this ſtatute extended not to five caſes. 1. If the Leaſe were without writing; for the words of the Act are (ſo that the Termor may have recovery by Writ of covenant.) 2. It extendeth not but to a recovery by default. 3. The Termor could not be relieved by this ſtatute, unleſs he knew of the recovery, and were received, &c. 4. By the better opinion of Books, it extended not to Tenants by ſtatute Merchant, ſtatute Staple or Elegit. 5. Not to Gardian. (l) But now the ſtatute of 21 H.8. doth give remedy in all the ſaid caſes, ſaving the caſe of the Gardian and giveth them power to falſifie all manner of recoveries had againſt the Tenants of the Freehold upon fained and untrue Titles, &c. Now the (m) ſtatute ſaith, that it was a doubt before that ſtatute whether a Termor for years might falſifie or no: but yet it ſeemeth by the better opinion of Books in ſo great variety, that the having but a Chattel, was not able by the Common Law to falſifie a covenous recovery of the Freehold, becauſe he could not have the thing that was recovered. (n) And Thirning & Hankford do hold that a Gardian is not within the ſtatute of Glouc'.

Lib.11. fol.33.

(l) 21 H.8. ca.15.

(m) That a termor might falſifie at the Common Law. Vid. 19 E.3. Aſſ. 82. 21 E.3.1. 7 H.7.11. b. 1 H.7.9.b. Pl. Com.83. 10 E.3.46. 19 E. 3. reſceit 112. That he could not. 30 H. 6. Fauxer recovery 9. 43 Aſſ.41. 26 H.8.2. 9 E.4.38. F.N.B.198. E. 14 H.8.4. lib.9. fo.135. Alcoughes caſes

If two Coparceners be, and one of them let her part to another for years, and after upon a Writ of partition brought againſt the Leſſor too little is allotted to the Leſſor, it is holden by ſome that the Leſſee cannot avoid it, for that it is made by the Oath of men, and judgment is thereupon given that partition ſhall remain firm and ſtable. But if there be two Coparceners of three acres of Land, every one of equal value and the one Coparcener letteth her part, and after make partition, and one acre is allotted only to the Leſſor, the Leſſee is not bound hereby, but he may enter and take the profits of another half acre, for that of right belongs unto him. Thus much I have thought good to ſet down, for it ſufficeth not to know what the Law is in theſe caſes unleſs he underſtand the reaſon and cauſe thereof.

(a) 7 H. 4. 12. 33 H.8. Dier 52.

And albeit (as hath been ſaid) a Leaſe for years muſt have a certain beginning, and a certain end, yet the continuance thereof may be incertain, for the ſame may ceaſe and revive again in divers caſes. As if Tenant in tail make a Leaſe for years reſerving xx. ſhillings, and after take a Wife and dy without iſſue, now as to him in the Reverſion the caſe is meerly void, but if he endow the Wife of Tenant in tail of the Land, (as ſhe may be, though the eſtate Tail be determined, now is the Leaſe as to the Tenant in Dower (who is) in of the ſtate of her husband) (a) revived again as againſt her, for as to her the eſtate Tail continueth, for ſhe ſhall be attendant for the third part of the Rent ſervices, and yet they were extinct by act in Law. So it is if Tenant in Tail make a Leaſe for years ut ſupra, and dieth without iſſue his Wife enſeint with a Son, he in the Reverſion enter, againſt him the Leaſe is void; but after the Son be born the Leaſe is good, if it be made according to the (b) ſtatute, and otherwiſe is voidable.

(a) 10 E.3.26. 34 Aſſ.15. 23 E.3. Dower 130.

(b) 32 H.8. ca.28.

The King made a Gift in Tail of the Manor of Eaſtfarleigh in Kent to W. to hold by Knights Service; W. made a Leaſe to A. for thirty ſix years, reſerving thirteen pound Rent; W. died, his ſon and heir of full age, all this was found by office; as to the King this Leaſe is not of force, for he ſhall have his Primer ſeiſin, as of Lands in poſſeſſion, but after Livery the Leſſee may enter; & if the iſſue in Tail accept the Rent, the Leaſe ſhall bind him, for the Kings Primer ſeiſin ſhall not take away the election of the iſſue in Tail, for it may be that the Rent was better than the Land, (c) and ſo it was adjudged in Auſtens caſe, as I had it of the report of Maſter Edmond Plowden, a grave and learned Apprentice of Law.

(c) Paſch.2, & 3 Ph. & Mar. in an information of Intruſion in the Exchequer againſt Auſten. Vid. Dier Paſch.2, & 3. Ph. & Mar. 115.

If Tenant in Fee take wife, and make a Leaſe for years and dieth, the wife is endowed, ſhe ſhall avoid the Leaſe, but after her decеaſe the Leaſe ſhall be in force again. But if the Patron grant the next avoidance, and after Parſon, Patron, and Ordinary, before the ſtatute (d) had made a Leaſe of the Glebe for years, and after the Parſon dieth, and the Grantee of the next avoidance had preſented the Clerk to the Church, who is admitted, inſtituted, and inducted, and dieth within the Term, the Patron preſents a new Clerk, and he is admitted, inſtituted and inducted, albeit he cometh in under the Patron that was party to the Leaſe, yet becauſe the laſt Incumbent, who had the whole ſtate in him, avoided the Leaſe, it ſhall not revive again, no more than if a Feme covert levy a Fine alone, if the husband enter and avoid the Fine, and by, the whole Eſtate is ſo avoided as it ſhall not bind the Wife after his death.

13 Eliz. ca.10. (d) 6 E.6. Dier 78. 17 E.3.52. 17 Aſſ.p.17. 2 R.3.20.9 H.6.33.

If

2 E.3.8. per Scroop.

If a woman be endowed of an Advowson which is appropriated, and the present, and her Incumbent is admitted, instituted and induced, albeit the Incumbent dy, yet is the appropriation wholly dissolved, because the Incumbent which came in by presentation, had the whole state in him, and so was it adjudged, as the case is to be intended.

Pl.Com.437. a.

Tenant in Tail make a Lease for forty years, reserving a Rent, to commence ten years after; Tenant in Tail dy, the issue enter and infeoff A. ten years expire, the Lessee enter, if A. accept the Rent, the Lease is good, for he shall have the same election that the issue in Tail had, either to make it good, or to avoid it, so as it could not be precisely affirmed, whether by the entry of the issue this executory Lease was avoided, but it dependeth incertainly upon the will of the Feoffee.

But now I know you are desirous to hear Littleton who is speaking to you.

¶ *Et quant le Lessee enter per force del Lease, donques el est Tenant pur terme des ans.* And true it is, that to many purposes he is not Tenant for years until he enter, as a release made to him is not good to him to increase his estate before entry; but he may release the Rent reserved before entry, in respect of privity. Neither can the Lessor grant away the reversion by the name of the reversion, before entry, vide Sect.567. But the Lessee before entry hath an interest, interesse termini grantable to another, vide Sect.319. And albeit the Lessor dy before the Lessee enters, yet the Lessee may enter into the Lands as our Author himself holdeth in this Chapter. And so if the Lessee dieth before he entred, yet his Executors or Administrators may enter, because he presently by the Lease hath an interest in him: And if it be made to two, and one dy before entry, his interest shall survive, Vid. Sect.281.

V. Sect. 454, 455.

V. Sect. 665. more fully of this matter.

He that hath a Lease for years hath it either in his own right, whereof Littleton hath here spoken, or in an others right, and that in divers manners, as a man may have a term for years in the right of his Wife, whereof the Husband hath power to dispose at any time during his life, and if he surviveth his Wife, the Law doth give the Lease to him. But if he make no disposition thereof, and his Wife survive him, it remaineth with the Wife: but of this in another place more fully.

If a man be possessed of a term of forty years in the right of his Wife, and maketh a Lease for twenty years, reserving a Rent, and dy, the Wife shall have the residue of the Term, but the Executors of the Husband shall have the Rent, for it was not incident to the Reversion, for that the Wife was not party to the Lease. So note a disposition of part of the Term is no disposition of the whole. But if the Husband grant the whole term, upon condition that the Grantee shall pay a sum of money to his Executors, &c. the Husband dy, the condition is broken, the Executors enter; this is a disposition of the Term: and the Wife is barred thereof, for the whole interest was passed away.

Hil. 17 El. in the Kings Bench.

If a Lease be made to a baron & feme for term of their lives, the Remainder to the Executors of the survivor of them, the Husband grant away this Term and dieth, this shall not bar the Wife, for that the Wife had but a possibility and no interest.

37 Ass. p. 11. Pl. Com. 418. b.

If the Husband and Wife be ejected of a Term in the right of his Wife, and the Husband bring an Ejectione firmæ in his own name, and have judgment to recover, this is an alteration of the Term, and vesteth it in the Husband.

If a Lease for years be made to a Bishop and his Successors, yet his Executors or Administrators shall have it in auter droit, for regularly no Chattel can go in succession in a case of a sole Corporation, no more than if a Lease be made to a man and his heirs, it can go to his heirs. But let us return to Littleton.

Li.5. fo.1. Clayton's Case, 12 Eliz. Dyer 286.

Touching the time of the beginning of a Lease for years, it is to be observed, that if a Lease be made by Indenture, bearing date 26 Maii, &c. to have and to hold for twenty one years, from the date, or from the day of the date, it shall begin on the twenty seventh day of May. If the Lease bear date the twenty sixth day of May, &c. to have and to hold from the making hereof or from henceforth, it shall begin on the day in which it is declared, for the words of the Indenture are not of any effect till the delivery, and thereby from the making, or from henceforth take the first effect. But if it be à die confectionis, then it shall begin the next day after the delivery.

14 El. Dyer 307. 5. El. Dyer 218.

If the Habendum be for the term of twenty one years, without mentioning when it shall begin, it shall begin from the delivery, for there the words take effect, as is aforesaid. If an Indenture of Lease bear date, which is void or impossible, as the thirtieth day of February, or the fortieth of March, if in this case the Term be limited to begin from the date, it shall begin from the delivery, as if there had been no date at all. (a) And so it is, if a man by his Indenture of Lease either recite a Lease which is not, or is void, or mis-recite a Lease in point material which is in esse, To have and to hold from the ending of the former Lease, this Lease shall begin in course of time from the delivery thereof.

Li.2. fo.5. Goddards Case.

(a) Pl. Com.148. 3 E.6. tit. Leases, Br.62. 3 El. Dyer 295. 1 Mar. Dyer 116.

¶ *Et si le Lessor en tiel case reserve a luy un annual rent sur tiel lease, il poet eslier a distreyner pur le rent, ou il poet aver action de debt pur les arrerages.*

¶ *Reserve*

¶ *Reſerve a luy un annual rent, &c.* Firſt, it appeareth (b) here by Littleton that a rent muſt be reſerved out of Lands or Tenements, whereunto the Leſſor may have reſort, or recourſe to diſtrein, as Littleton here alſo ſaith, and therefore a rent cannot be reſerved by a common perſon out of any incorporeal inheritance, as Advowſons, Commons, Offices, Corrody, Multure of a mill, Tythes, Fairs, Markets, Liberties, Priviledges, Franchiſes, and the like. (c) But if the Leaſe be made of them by Deed for years, it may be good by way of Contract to have an Action of debt, but diſtrein the Leſſor cannot. Neither ſhall it paſs with the grant of the reverſion, for that it is no rent incident to the reverſion. But if any rent be reſerved in ſuch caſe upon a leaſe for life, it is utterly void, for that in that caſe no Action of debt doth lie. But if a man demiſeth the veſture or herbage of his land he may reſerve a rent, for that the thing is mainorable, and the Leſſor may diſtrein the cattel upon the land: And ſo a reverſion, or a remainder of lands or tenements may be granted reſerving a rent, for the apparent poſſibility that it may come in poſſeſſion, and they are Tenements within the words of Littleton.

(b) Li.7 fo.23. Bdw caſe. Lib.10. fo. 59,60.
(c) 30 Aſſ.p.5. 12 Aſſ.20. 20 E.4.10. 1 H.4.1,2,3. 11 H.4.82. 19 E.2. fines 126. 44 E.3.45. 9 Aſſ.24. 26 Aſſ.60. 14 E.3. Scir. fac.122. 5 E.3.68. 17 E.3.75. 11 H.4.40. 3 H.6.21.45. 10 H.6. 12.21 H.6.11. 5 H.7.39. 21 H. 7.19. 17 E.2. Ex.132. 23 El. Dyer 377.

(a) It appeareth by Littleton that reſervando is an apt word of reſerving a Rent, and ſo is reddendo, ſolvendo, faciendo, inveniendo, dummodo, and the like.

(a) 40 E.3.47. 8 E.3.67. 21 E.4.62. 3 H.6.45.

(b) And note a diverſity between an exception (which is ever of part of the thing granted and of a thing in eſſe) for which, exceptis, ſalvo, præter and the like, be apt words; and a reſervation which is alwayes of a thing not in eſſe, but newly created or reſerved out of the land or Tenement demiſed. (c) Poterit enim quis rem dare & partem rei retinere, vel partem de pertinentiis, & illa pars quam retinet ſemper cum eo eſt & ſemper fuit. (d) But out of a general a part may be excepted, as out of a Mannor, an Acre, Ex verbo generali aliquid excipitur, and not a part of a certainty, as out of twenty Acres, one.

(b) 31 Aſſ.p.30. 3 Aſſ.9. 26 Aſſ.66. 32 E.3. Br. 291. 8 E.4.8. 10 El. Dy.256. Pl. Com. en Browning & Beeſtones caſe, fol.131, 132, &c.
(c) 50 E.3. 12. 13 Aſſ.9. 38 E.3. 10. 21 E. 3,4. 34 Aſſ.11. 29 E.3.14.
(d) 9 El. Dy.264. 38 H.6.38. 14 H.8.1. 22 E.3.8. 2 E.3.56. 5 E.3. 66. 34 Aſſ. 11.

It is further to be obſerved that the Leſſor cannot reſerve to any other but to himſelf, for Littleton ſaith, reſerve a luy, reſerve to himſelf. (e) If two Joyntenants be, and they make a leaſe for years by paroll, or deed poll reſerving a rent to one of them, this ſhall enure to them both, but if it be ſo reſerved by Deed indented, it ſhall enure to him alone by way of concluſion.

(e) 5 E.4.4. 14 E.3. Bre.282. li.8. fol.70, 71.

(f) Littleton here is putting of a caſe, and not making of a leaſe; for then he would not reſerve the rent to him, but to him and his heirs, for otherwiſe the rent ſhall determine by his death, if he by within the term. (g) But if he reſerve a rent generally without ſhewing to whom it ſhall go, it ſhall go to his heirs. If he reſerve a Rent to him and his Aſſignes, yet the Rent ſhall determine by his death, becauſe the reſervation is good but during his life. So it is if he reſerve a Rent to him and his Executors, it ſhall end by his death becauſe the heir hath the reverſion, and the rent was incident to the reverſion. So if a man warrant land to B. and his Aſſignes, the Aſſignes muſt vouch during the life of B, for the warranty continues but onely during the life of B. for the warranty is but for life, for want of words of inheritance. But if the warranty be to B. his heirs and Aſſigns, ſo as he hath an inheritance therein, then his Aſſignes ſhall vouch after his deceaſe. So if the Rent be reſerved to the Leſſor his heirs and Aſſigns, ſo as it be incident to the inheritance, then ſhall all the Aſſignees of the Reverſion enjoy the ſame.

(f) Vid. ſect.214,215,216,&c. 10 E.4.18. 11 E 3. Aſſ.86. 27 H.8.19. 21 H.7.25. 30 H.8. Dyer 45.
(g) Mich. 5. Ja. in repl. inter Wooton & Edwin en bank le Roy. Hil. 33. El. Rot. 1431. in Bank le Roy, entet Richmond and Butcher.

¶ *Annual rent.* So it is if the Rent be reſerved every two or three or more years. Of Rents Littleton doth excellently treat hereafter in his Chapter of Rents, and therefore in this place thus much ſhall ſuffice.

A diſtreiner pur le rent. Here it is neceſſary to be ſeen of what things a diſtreſs may be taken for a Rent, and how the diſtreſs ought to be demeaned. (h) Firſt it muſt be of a thing, whereof a valuable property is in ſome body, and therefore Dogs, Bucks, Does, Conies, and the like, that are feræ naturæ cannot be diſtrained. Secondly, although it be of valuable property, as a horſe, &c. yet when a man or woman is riding on him, or any in a mans hand cutting of wood, and the like, they are for that time priviledged and cannot be diſtrained.

Vid. for this word Diſtrein, ſect. 136.
(h) 14 H 8.25. 2 F.2. tit. Diſtreſs. 6 R. 2. Reſcous 11. 7 E.3. Avowr. 199. 15 E.2. Avowr.2.

(i) Thirdly, valuable things ſhall not be diſtrained for Rent, for benefit and maintenance of trades, which by conſequent are for the Common-wealth, and are there by authority of Law as a horſe in a Smiths ſhop ſhall not be diſtrained for the Rent iſſuing out of the ſhop, nor the horſe, &c. in the hoſterie, nor the materials in the Weavers ſhop for making of cloth, nor cloth or garments in a Tailors ſhop, nor ſacks of corn or meal in a Mill, nor in a Market, nor any thing diſtrained for damage feaſant, for it is in cuſtody of Law, and the like.

(i) 22 E.4.49. b. 7 H.7.1.b. 22 E.4.36. 4 E. 6. tit. Diſt. Br.74.

(k) Fourthly, nothing ſhall be diſtrained for Rent, that cannot be rendred again in as good plight as it was at the time of the diſtreſs taken, as ſheaves or ſhocks of corn or the like cannot be diſtrained for Rent, but for damage feaſant they may be diſtrained. But charrets or carts with corn may be diſtrained for Rent, for they may be ſafely reſtored.

(k) 18 E.3.4. 2. 11 H.7.14.2. 21 H.7.39. b. 22 E.4.5.2. b. 2 H.4. 15.

(l) Fifthly, beaſts belonging to the plow, averia carucæ ſhall not be diſtrained, which is the ancient common law of England, for no man ſhall be diſtrained by the utenſils or inſtruments of his trade or profeſſion, (as the axe of the Carpenter, or the books of a Scholler) while goods or

(l) Okeham 38,39. Bra li.4. f.217. F.N.B. 90.2. Reg.97. Flet. li.2.c.41. Mirr. cap.2. ſect.15,16. 4 E.3.1. 29 E.3.17.

or other beasts, which Bracton calls animalia (or catalla) otiosa, may be distrained. (m) 6. Furnaces, Cauldrons, or the like, fixed to the Freehold, or the doors or windows of a house, or the like cannot be distrained. (n) Lastly, beasts that escape may be distrained for rent, though they have not been levant and couchant. (o) Note, that he that distrains any thing that hath life, must impound them in a lawful Pound within three miles in the same County, and that is either Overt or Open, in a Pinfold made for such purposes, or in his own Close, or in the Close of another by his consent. And it is therefore called Open, because the owner may give his Cattle meat and drink, without trespasse to another, and then the Cattle must be sustained at the peril of the owner. (p) Or it is a Pound Covert or Close, as to impound the Cattle in some part of his house, and then the Cattle are to be sustained with meat and drink at the peril of him that distraineth, and he shall not have any satisfaction therefore. But if the distresse be of Utensils of houshold, or such like dead goods which may take harm by wet or weather, or be stolne away, there he must impound them in a house or other Pound covert within three miles within the same County, for if he impound them in a pound overt he must answer for them.

(m) 21 H.7. 26. 3 E.3. Ass. 46.9. (n) 7 H.7.1. b.10 H.7. 21. 11 H.7.4. a. 15 H.7.17. 18 E.2. avowry 219. 6 E.4. 22 E.4. 49. 4 E.3. distress.18. 27 E.3.80. 2 H.4.16. (o) Marlebr. cap.4. W.1. cap. 16. 2 & 3 Ph. & Mar. cap. 13. Fleta lib.2. cap. 20. 6 H.3. avowry 242. 30 Ass.38. 1 H.6.9. 22 E.4. 11. F.N.B. 89. Doctor and Student, lib.2. cap.27. 5 H.7. fol.9. (p) 31 H.8. tit. distres. Br.65.

(q) If the distress be taken of goods without cause, the owner may make Rescous, but if they be distrained without cause, and impounded, the owner cannot break the Pound and take them out, because they are then in the custody of the Law.

(q) 4 E.6. tit. distres.74. F.N.B. 100. E.

(r) But if a man distrain Cattle for Damage feasant, and put them in the Pound; and the owner that had common there make fresh suit, and find the door unlocked, he may justifie the taking away of the Cattle in a Parco fracto. (s) If the owner break the Pound, and take away his goods, the party distraining may have his Action De parco fracto, and he may also take his goods that were distrained wheresoever he find them, and impound them again.

(r) 3 E.3. tit. trans. 11.

(s) 34 H.6.18.

It is called a Writ De parco fracto, of these words in the Writ (t) Parcum illum vi & armis fregit. And the form thereof appears in the Register and F. N. B.

(t) Regist.F.N.B. 100,101.

But it is to be observed, that for the rent due the last day of the Term, the Lessor cannot distrain, because the term is ended; and therefore some use to reserve the last half years rent, at the Feast of the Nativity of Saint John Baptist before the end of the Term; so as if the rent be not then paid, he may distrain between that and Michaelmas following.

¶ *Action de debt.* Note a diversity between a rent reserved upon a lease for years, reserving a yearly rent: the Lessor may have several Actions of debt for every years rent. But upon a bond or contract for payment of several sums, no Action of debt lyeth till the last day be past. But otherwise it is of a Recognizance, which see at large, and the reason thereof cap. Releases, Sect.512, 513. (u) Note, that the Lord shall not have an Action of debt for relief, or for escuage due unto him, because he hath other remedy; but his Executors or Administrators shall have an Action therefore, because it is now become as a flower falne from the stock and they have no other remedy. Neither shall the Lord have an Action of debt for aid, pur file marier, or faite fitz Chivaler, for the cause aforesaid.

(u) 7 H.6.13. lib.4. fol.49. Lib.3. fol.16. 34 E.1. tit. avowry 233. 32 H.8. Br. relief 11 F.N.B. 82,83. Glanvil. lib.9. cap.35. Fleta lib.2. cap.40. & lib.3. cap.14. Bract. lib.2. fol.36. W.1. cap. 35.25 E.3.cap.11. Britton fol.57. & 70.

¶ *Mes en tiel case il covient que le Lessor soit seisie de mesmes les tenements al temps del lease, car est bone plea pur le Lessee a dire que le Lessor navoit riens, en les tenements al temps del lease.* And the reason of this is, for that in every contract there must be quid pro quo, for contractus est quasi actus contra actum; and therefore if the Lessor hath nothing in the Land, the Lessee hath not quid pro quo, nor any thing for which he should pay any rent. And in that case he may also plead, that the Lessor non dimisit and give in evidence the other matter.

¶ *Si* (x) *non que le lease soit per fait indent, &c.* If the Lease be made by Deed indented, then are both parties concluded; (y) but if it be by Deed poll, the Lessee is not estopped to say that the lessor had nothing at that time of the lease made. A. lesse for the life of B. makes a lease for years by Deed indented, and after purchase the reversion in fee, B. dieth. A. shall avoid his own lease; for he may confesse and avoid the lease which took effect in point of interest, and determined by the death of B. But if A. had nothing in the Land, and made a lease for years by Deed indented, and after purchase the land, the lessor is as well concluded, as the lessee to say that the lessor had nothing in the land, and here it worketh onely upon the conclusion, and the lessor cannot confesse and avoid as he might in the other case. (z) If a man take a lease of his own land by Deed indented, reserving a Rent, the lesse is concluded. (a) But if a man take a lease of the herbage of his own land by Deed indented, this is no conclusion, to say that the lessor had nothing in the land, because it was not made of the land it self; (b) but if a man take a lease for years of his own land by Deed indented, the Estoppel doth not continue after the term ended. For by the making of the lease, the Estoppel doth grow; and consequently by the end of the lease, the Estoppel determine, (c) and that part

(x) 45 E.3.7. 20 E.4.10. 34 H.6.48.35 H.6.34. 9 H.6.35. 11 H.4.22. (y) 2 E.2. Estop.253. 39 E.3.13. Pl. Com.434. 18 E.3.16. 15 E.3. Estop.246. 14 H.4.32.

(z) 14 H.6.23. 8 H.4.7.

(a) Resolve Pasch. 2. Eliz. in Communi Banco. (b) Mich.31. & 32 Eliz. in Communi Banco adjudge in Londons case (c) 38 H.6.24. 30 E.3.21.

part of the Indenture which belonged to the Leſſee, doth after the term ended, belong to the Leſſor, which ſhould not be, if the Eſtoppel continued.

Sect. 59.

¶ ET eſt alcaboir, Que en leaſe pur terme de ans per fait ou ſans fait, il ne beſoygne alcun liverie de Seiſin deſtre fait al Leſſee, mes il poit entrer quant il voit p force de meſme le Leaſe. Mes des Feoffments faits en pais, ou donées en le Taile, ou leaſe pur terme de vie en tiels caſes ou Franktenement paſſera, ſi ceo ſoit per fait ou ſauns fait, il covient aver un liverie de ſeiſin.

AND it is to be underſtood, That in a Leaſe for years by deed or without deed, there needs no Livery of Seiſin to be made to the Leſſee, but he may enter when he will by force of the ſame Leaſe. But of Feoffments made in the Country, or Gifts in Taile, or Leaſe for term of life, in ſuch caſes where a Freehold ſhall paſs, if it be by Deed, or without Deed, it behoveth to have livery of Seiſin.

¶ *Livery de Seiſin*, Traditio or deliveratio ſeiſinæ, is a ſolemnity that the Law requireth for the paſſing of a Freehold of Lands or Tenements by delivery of Seiſin thereof. (b) Intervenire debet ſolemnitas in mutatione liberi tenementi, ne contingat donationem deficere pro defectu probationis.

18 E.3.fo.16. 41 E.3.17. 40 Aſſ.10. 2 Aſſ.1. 2 E.3. 4. 43 E.3. Feoff.51. Pl. Com.25.a. & 303.b. Vide ſect. 66.

(b) Bract. lib.2. cap.15.

And there be two kinds of livery of ſeiſin, viz. a livery in (c) Deed, and a livery in Law. A livery in Deed is when the Feoffor taketh the ring of the Dore, or Turf, or twig of the Land, and delivereth the ſame upon the Land to the Feoffee in name of Seiſin of the Land, &c. per hoſtiam & per haſpam & annulum vel per fuſtem vel baculum, &c.

(c) Bract. lib.2.cap.15,& 18. Brit.cap.33. in fine, fo.87. Fleta lib.3. cap.15.

A. ſeiſed of a houſe in Fee, and being in the houſe, (d) ſaith to B. I demiſe to you this houſe for term of my life; this is a good beginning to limit the ſtate, but here wanteth livery. A livery indeed may be done two manner of wayes by a ſolemn act and words, as by delivery of the ring or haſpe of the Dore, or by a branch or twig of a Tree, or by a turf of the Land; and with (e) theſe and the like words, the Feoffor and Feoffee both holding the Deed of feoffment, and the ring of the Dore, haſpe, branch, twig, or turf: and the Feoffor ſaying, Here I deliver you ſeiſin and poſſeſſion of this houſe in the name of all the Lands and Tenements contained in this Deed, according to the form and effect of this Deed. Or by words without any Ceremony or Act as the Feoffor being at the houſe dore, or within the houſe. Here I deliver you ſeiſin and poſſeſſion of this houſe, in the name of ſeiſin and poſſeſſion of all the Lands and Tenements contained in this Deed, Et ſic de ſimilibus, or, Enter you in this Houſe or Land, and have and enjoy it according to the Deed; or, Enter into this Houſe or Land, and God give you joy; or, I am content you ſhall enjoy this Land according to the Deed, or the like. For if words may amount to livery within the view, much more it ſhall upon the Land: But if a man deliver the deed of feoffment upon the Land, this amounts to no livery of the Land, for it hath another operation to take effect as a Deed; but if he deliver the Deed upon the Land in name of ſeiſin of all the Lands contained in the Deed, this is a good livery: and ſo are other Books intended that treat thereof that the Deed was delivered in name of ſeiſin of that Land. Hereby it appeareth, that the delivery of any thing upon the Land in the name of ſeiſin of that Land, though it be nothing concerning the Land, as a ring of gold, is good; and ſo hath it been reſolved by all the Judges. and ſo of the like.

(d) Lib.6.fo.26.Sharp's caſe.

(e) See of this more, ſect.60.

41 E.3.17.b. 41 Aſſ. p. 10. 38 Aſſ.p.2. 38 E 3.11. 39 Aſſ.p.12. 26 Aſſ.39. 27 Aſſ.p.61. 18 E.2.16. Lib.6. fol.26. Sharp's Caſe.

43 E.3.tit.Feoff 51. 35 H.8. Feoffm. Br.

50 E.3. Rot. Parl.nu.30.

If divers parcels of Land be contained in a Deed, and the Feoffor delivers ſeiſin of one parcel according to the Deed all the parcels do paſs, albeit he ſaith not (in name of all, &c.) becauſe the Deed containeth all. And ſo if there be divers Feoffees, and he make a livery to one according to the Deed, the Land palleth to all the Feoffees, and yet the plainer way is to ſay (in the name of the whole, or of all the Feoffees.)

13 E.3. Eſtop. 177.

If a man make a Charter in fee and deliver ſeiſin for life ſecundum formam cartæ, the whole Fee ſimple ſhall paſs, for it ſhall be taken moſt ſtrongly againſt the Feoffor. Note, that theſe words (Secundum formam cartæ) are underſtood according to the quantity and quality of the effectual eſtate contained in the Deed. If a man make a Leaſe for years by Deed, and deliver

Ibidem.

7 E.4.25. 29 Aſſ.40. 10 Aſſ.19. 43 Aſſ.20.

livery ſeiſin according to the form and effect of the Deed: yet he hath but an Eſtate for years, and the livery is void, as Littleton ſaith. So if A. by Deed give Land to B. to have and to hold after the death of A. to B. and his heirs, this is a void Deed, becauſe he cannot reſerve to himſelf a particular Eſtate, and conſtruction muſt be made upon the whole Deed, and if livery be made according to the form and effect of the Deed, the livery alſo is void, becauſe the livery referreth to a Deed that hath no effect in Law; and therefore it cannot work ſecundum formam & effectum cartæ. And ſo it was adjudged, & ſic de ſimilibus. * And it is to be obſerved, that neither the Feoffor being abſent can make livery; nor the Feoffee being abſent, can take livery, but by warrant of Attorney, by Deed and not by Parol, becauſe it concerneth matter of Freehold.

Mich. 33, & 34 Eliz. in the Kings Bench inter Hogge and Croiſe for Lands in London.
Vide Pl. Com. 395.
* See more of this ſect. 66.
11 H. 4. 71. 19 Aſſ. 9.
19 H. 8. 9. b.

Vide Sect. 1. in Bridgewaters Caſe, where a man hath a moveable Eſtate of Inheritance, for example there put, in 13. acres: the queſtion is, Where livery ſhall be made. Firſt, if they be parcell of a Mannor, they may paſs by the name of the Mannor; but if they be in groſſe, then the Charter of feoffment muſt be of 13. acres, lying and being in the Meadow of 80. acres, generally without bounding or deſcribing of the ſame in certainty, and livery of the ſeiſin of any 13 acres allotted to the Feoffee for a year ſecundum formam cartæ, is a good livery to paſs the content of 13 acres whereſoever the ſame lye in that Meadow. In the ſecond caſe where one entire Mannor is ſeparate and divided, as is aforeſaid, there is no queſtion but the livery muſt be made of that Mannor; but in the other caſe, where two Mannors are ſeparate and divided alternis vicibus, there the Charter of feoffment muſt be made of both, and livery in that mannor which he is ſeiſed of in any one year ſecundum formam cartæ, and the next year in the other ſecundum formam cartæ: for there are two diſtinct Mannors, and ſeveral Eſtates in them.

Bridgewaters Caſe.

Vide ſect. 1.

A livery in Law is when the Feoffor ſaith to the Feoffee being in the view of the houſe or Land, (I give you yonder Land to you and your heirs, and go enter into the ſame, and take poſſeſſion thereof accordingly) and the Feoffee doth accordingly in the life of the Feoffor enter, this is a good feoffment, for Signatio pro traditione habetur. And herewith agreeth Bracton, Item dici poterit. & aſſignari quando res vendita vel donata ſit in conſpectu, quam venditor & donator dicit le tradere: and in another place he ſaith, in ſeiſina per effectum & per aſpectum. But if either the Feoffor or the Feoffee dye before entry, the livery is void. And livery within the view is good, where there is no Deed of feoffment; (a) And ſuch a livery is good, albeit the Land lye in another Countrey. (b) A man may have an inheritance in an upper Chamber, though the lower buildings and ſoil be in another; and ſeeing it is inheritance corporeal it ſhall paſſe by livery: (c) A man maketh a Charter of feoffment, and delivers ſeiſin within the view, the Feoffee dares not enter for fear of death, but claims the ſame; this ſhall veſt the Freehold and inheritance in him, albeit by the livery no Eſtate paſſed to him, neither in Deed, nor in Law, ſo as ſuch a claim ſhall ſerve, aſwell to veſt a new Eſtate and right in the Feoffee, as in the common caſe to revеſt an ancient Eſtate and right in the Diſſeiſee, &c. as ſhall be ſaid hereafter more at large in the Chapter of continual Claim. And ſo note a livery in Law ſhall be perfected and executed by an entry in Law. (d) If a man be diſſeiſed and make a Deed of feoffment, and a Letter of Attorney to enter and take poſſeſſion, and after to make livery ſecundum formam cartæ: this is a good feoffment, albeit he was out of poſſeſſion at the time of the Charter made; for the authority given by the Letter of Attorney is executory, and nothing paſſed by the delivery of the Deed, till livery of ſeiſin was made: And in ancient Letters of Attorney, power is given to others to take poſſeſſion from the Feoffor. But if a man be diſſeiſed, and make a writing of a Leaſe for years, and deliver the Deed; and after deliver it upon the ground, the ſecond delivery is void, for the firſt delivery made it a Deed; and for that the Leaſe for years muſt take effect by the delivery of the Deed. therefore the Deed delivered when he was out of poſſeſſion, was void; But ſo it is not of a Charter of feoffment, for that takes effect by the livery and ſeiſin. But if the Leſſor had delivered it as an Eſcrow to be delivered as his Deed upon the ground, this had been good.

38 E. 3. 11. 38 Aſſ. p. 2.
43 Aſſ. p. 20. Temps H. 8.
11t Feoffments Br. 70.
18 E. 3. 16. b.
28 H. 8 F. 18. 9 E. 4. 39. per Moyle.
Bract. lib. 2. cap. 18, & lib. 4. fol. 225. a.

(a) 9 E. 4. 39. 38 E. 3. 11.
(b) 9 E. 4. 28. 40. 5 H. 7. 9.
3 H. 6. tit. Pleint. 1.
11 H. 4. 32. 11 E. 3. Aſſ. 86.
(c) 38 Aſſ. p. 23.

(d) Hil. 37 Eliz. Rot. 626. in Com. Banco, inter Brown and Terrey adjudged.
Dyer 16 Eliz. 334.
3 Eliz. Dyer 131.

A man makes a Leaſe for years, and after makes a Deed of feoffment, and delivers ſeiſin, the Leſſee being in poſſeſſion, and not aſſenting to the feoffment, this livery is void; for albeit the Feoffor hath the Freehold and Inheritance in him, yet that is not ſufficient, for a livery muſt be given of the poſſeſſion alſo: but if the Leſſee be abſent, and hath neither Wife nor ſervants (though he hath Cattel) upon the ground, the livery of ſeiſin ſhall be good.

Lib. 3. fol. 35. inter Jennings and Bragge.

If a man be ſeiſed of an houſe, and of divers ſeveral Cloſes in one County in Fee, and makes a Leaſe thereof for years, and afterward maketh a feoffment in fee of the ſame, and makes livery of ſeiſin in the Cloſes, (the Leſſee, or his wife or ſervants then being in the houſe) the livery is void for the whole: for the Leſſee cannot be upon every parcel of the Land to him demiſed, for the preſervation and continuance of his poſſeſſion therein. And therefore his being in the Houſe, or upon any part of the Land to him demiſed, is ſufficient to preſerve and continue his poſſeſſion in the whole, from being ouſted or diſpoſſeſſed.

Lib. 2. fol. 31, 32. Bettiſworth's Caſe.

Note,

Note a great diverſity, when a man hath two wayes to paſs lands, and both of the wayes be by the Common Law, and he intendeth to paſs them by one of the wayes, yet ut res magis valeat it ſhall paſs by the other. But where a man may paſs lands either by the Common Law, or by raiſing of an uſe, and ſetting it by the ſtatute, there in many caſes it is otherwiſe. For example. If a man be ſeiſed of two acres in Fee, and letteth one of them for years, and intending to paſs them both by Feoffment, maketh a Charter of Feoffment, and maketh livery in the acre in poſſeſſion, in name of both, onely the acre in poſſeſſion paſſeth by the livery. Yet if the Leſſe attorn, the Reverſion of that acre ſhall paſs by the deed and attornment, for he is in by the Common Law, and in the per in both, and ſo in the like. But otherwiſe it is, if the father make a Charter of Feoffment to his ſon, and a Letter of Attorney to make livery, and no livery is made, yet no uſe ſhall riſe to the ſon, becauſe he ſhould be in by the ſtatute in another degree, viz. in the poſt, and the intention of the parties worke much both in the raiſing and direction of uſes. So if Ceſtuy que uſe and his feoffees, had joyned in a feoffment after the ſtatute of 1 R. 3. &c. it had been the feoffment of the feoffees, and the confirmation of Ceſtuy que uſe, for the ſtate at the Common Law ſhall be preferred. So to conclude this point; Of Freehold and Inheritances, ſome be corporeal, as houſes, &c. lands, &c. theſe are to paſs by livery of Seiſin, by Deed or without Deed; ſome be incorporeal, as Advowſons, Rents, Commons, Eſtovers, &c. theſe cannot paſs without Deed, but without any livery. And the Law hath provided the deed in place or ſtead of a livery. And ſo it is if a man make a leaſe, and by deed grant the reverſion in fee, here the Freehold with attornment of the Leſſee by the Deed doth paſs, which is in lieu of the Livery. See Bract. lib. 2. cap. 18. Et eſt traditio de re corporali de perſona in perſonam de manu, &c. gratuita tranſlatio, & nihil aliud eſt traditio in uno ſenſu, niſi in poſſeſſionem inductio de re corporali; & ideo dicitur, Quod res incorporales non patiuntur traditionem ſicut ipſum jus quod rei ſive corpori inhæret, & quia non poſſunt res incorporales poſſideri ſed quaſi, ideo traditionem non patiuntur, &c.

7 E. 4. 20. a per tour. les Juſt. 11 H. 4. 71. Pl. Com. 152. 10. E. 4. 3.

Lib. 2. fol. 35, 36. Sir R. Heywards caſe.

1 R. 3. ca. 1. 21 H. 7.

This ancient manner of conveyance by feoffments and livery of ſeiſin, doth for many reſpects exceed all other conveyances. For (as hath been ſaid) if the Feoffor be out of poſſeſſion, neither fine, recovery, indenture of bargain and ſale inrolled, nor other conveyance, doth avoid an eſtate by wrong, and reduce clearly the eſtate of the Feoffee, and make a perfect Tenant of the Freehold, but onely livery of ſeiſin upon the land: the other conveyances being made off from the ground, do ſometimes more hurt than good, when the Feoffor is out of poſſeſſion. And yet in ſome caſes a Freehold ſhall paſs by the Common Law without livery of ſeiſin: As if a houſe or land belong to an office, by the grant of the office by Deed, the houſe or land paſſeth as belonging thereunto. So if a houſe or chamber belong to a Corody by the grant of a Corody, the houſe or chamber paſſeth. A freehold may by cuſtom be ſurrendred without livery, as hereafter ſhall be ſaid: and ſo of aſſignment of Dower Ad oſtium Eccleſiæ, or otherwiſe, and by exchange a Freehold may paſs without livery, as hereafter ſhall be ſaid in this Chapter.

Lib. 2. fo. 55. Buckers caſe.

1 H. 7. 28. 8 H. 7. 4.

31 H. 6. 16. 8 H. 7. 4. M. 31 E. 1. coram Rege. Ranulph Huntingfels caſe. 4 E. 3. Coron. 310. 21 H. 4. 33. V. fol. 74.

Sect. 60.

¶ MEs ſi home leſſa terres ou Tenements per fait, ou ſas fait, a terme des ans, le remainder ouſter a un auter pur terme de vie, ou en taile, ou en Fee donque en tiel caſe il covient que le Leſſor fait un liverie de ſeiſin a le Leſſee p terme de ans, ou autrement riens paſſa a eux en le remaind̄ tamt q̄ le Leſſee ent̄ en

BUt if a man letteth lands or tenements by deed or without deed for term of years, the remainder over to another for life, or in taile, or in fee; in this caſe it behooveth, that the Leſſor maketh livery of ſeiſin to the Leſſee for years, otherwiſe nothing paſſeth to them in the remainder, although that the Leſſee enter into the

¶ *Per fait, ou ſans fait.* For ſeeing that the remainders take effect by livery, there needs no Deed.

22 H. 6. 1. 10 E. 4. 1. 18 E. 4. 13.

¶ *Le remainder* is a reſidue of an eſtate in land depending upon a particular eſtate, and created together with the ſame, and in Law-Latine it is called Remanere.

¶ *Fait un liverie de ſeiſin al Leſſee.* This livery is not neceſſary in this caſe for the Leſſee himſelf, becauſe he hath but a Term for years; but it is for the benefit of them in the rem', ſo as the livery to the Leſſee ſhall enure for the benefit of them in the rem': for the livery

very of the poſſeſſion could not be made to the next in remainder becauſe the poſſeſſion belonged to the Leſſee for years, and for that the particular term, and all the remainders make in Law but one eſtate, and take effect at one time, therefore the livery is to be made to the Leſſee, but if a leaſe for years without Deed be made to A. and B. the remainder to C. in Fee, and livery is made to A. in the abſence of B. in the name of both, it ſometh the livery is good to veſt the remainder, and there is a diverſity between two joynt Attornies to receive livery for another, and livery and ſeiſin is made to one of them, in the name of both, this is clearly void, becauſe

les tenements. Et ſi le termor en tiel cas entra devant aſcun liverie de ſeiſin fait a luy, donque eſt le franktenemẽt & auxy le reverſion en le Leſſor: Mes ſi il fait liverie de ſeiſin a le Leſſee, donque eſt le franktenement ove le fee a eux en le remainder, ſolonqꝫ le forme del grant & le volunt del Leſſor.

tenements. And if the Termour in this caſe entreth before any livery of ſeiſin made to him, then is the Freehold and alſo the Reverſion in the Leſſor. But if he maketh livery of ſeiſin to the Leſſee, then is the Freehold together with the fee to them in the remainder according to the form of the grant, and the will of the Leſſor.

10 E.4.1. 12 E.4.16. 15 E.4.18. 22 E.4.35. 40 E.3.10.41. Temps H. 8. Feoffments 72. 6 H.4. 2. b. Litt.153. 3 H.7. 13.

they had but a meer and bare authority, and they both do in Law make but one Attorney, unleſs the warrant be joyntly, and ſeverally, but the Leſſee for years hath an intereſt in the land. Again, if A. is to make a feoffment to B. and C. and their heirs without Deed, and A. makes livery to B. in the abſence of C. in the name of both, and to their heirs, this livery is void to C. becauſe a man being abſent cannot take a Freehold by a livery, but by his Attorney being lawfully authorized to receive livery by Deed, unleſs the Feoffment be made by Deed, and then the livery to one in the name of both is good.

Note, there is a diverſity between livery of ſeiſin of land, and the delivery of a deed, for if a man deliver a deed without ſaying of any thing, it is a good delivery; but to a livery of ſeiſin of land words are neceſſary, as taking in his hand the Deed, and the ring of the door (if it be of an houſe) or a turff or twig (if it be of land,) and the Feoffee laying his hand on it, the Feoffor ſay to the Feoffee; Here I deliver to you ſeiſin of this houſe, or of this land, in the name of all the land contained in this Deed, according to the form and effect of the Deed, (as hath been ſaid,) and if it be without Deed, then the words may be, Here I deliver you ſeiſin of this houſe or land, &c. to have and to hold to you for life, or to you and the heirs of your body, or to you and your heirs for ever, as the caſe ſhall require.

Ruth cap.4. verſ.7,8. Deut.25.9,10.

When the Kinſman of Elimelech gave unto Boaz the parcel of land that was Elimelechs, he took off his ſhoe, and gave it unto Boaz in the name of ſeiſin of the land (after the manner in Iſrael) in the preſence, and with the teſtimony of many witneſſes. And when Ephron enfeoffed Abraham of the field of Machpelah, he ſaid to him, Agrum trado tibi, &c. I deliver this field to thee.

Gen.23. verſ.11.

If man makes a leaſe for years to A. the remainder to B. in fee, and makes livery to A. within the view: this livery is void, for no man can take by force of a livery within the view, but he that taketh the Freehold himſelf.

¶ *Et ſi le termor en tiel caſe enter devant aſcun liverie fait, &c.* By the entry of the Leſſee, he is in actual poſſeſſion, and then the livery cannot be made to him that is in poſſeſſion, for Quod ſemel meum eſt, amplius meum eſſe non poteſt. But if the Leſſor and Leſſee come upon the ground, of purpoſe for the Leſſor to make, and for the Leſſee to take livery, there his entry veſts no actual poſſeſſion in him until livery be made, for (a) Affectio tua nomen imponit operi tuo. And therefore if it be agreed between the Diſſeiſor and Diſſeiſee, that the Diſſeiſee ſhall releaſe all his right to the Diſſeiſor upon the land, and accordingly the Deſſeiſee entreth into the land, and delivereth the releaſe to the Diſſeiſor upon the land, this a good releaſe, and the entry of the Diſſeiſee, being for this purpoſe, did not avoid the Diſſeiſin, for his intent in this caſe did guide his entry to a ſpecial purpoſe. And ſo was it reſolved (b) by Sir James Dyer, and the whole Court of Common Pleas, Paſch. 18 Eliz. upon evidence which I my ſelf heard and obſerved. But if the Diſſeiſor infeoff the Diſſeiſee and others there, albeit the Diſſeiſee came to take livery, yet when livery is made the Diſſeiſee is remitted to the whole in judgment of law, as ſhall be ſaid more at large in the chapter of Remitter in his proper place.

(a) Bracton lib.1.

(b) P.19. Eliz. in Communi Banco. Pl. Com. in Aſſ. de freſh. force 91. 29 Aſſ.26. 43 Aſſ. p.3. 3 H.6.19. in Formedon.

Sect.

Sect. 61.

¶ ET ſi home voile faire feoff, p fait ou ſans fait, de tres ou tenements que il ad en pluſors Villes en un Countie, le liverie de ſeiſin fait en un parcel de les tenements en un ville en le noſme de touts ſuffiſt pur touts les autres terres & tenements compzehendes deins ñ l' Feoffment, en toutz les autres villes deins ñ le Countie. Mes ſi home fait un fait de Feoffment des terres ou Tenements en divers Counties, la il covient en chelcun Countie aver un liverie de ſeiſin.

AND if a man will make a Feoffment by Deed or without Deed of Lands or Tenements which he hath in divers Townes in one County the Livery of Seiſin made in one parcell of the Tenements in one Town in the name of all the reſt is ſufficient for all other the Lands and Tenements comprehended within the ſame Feoffment in all other the Towns in the ſame County, but if a man maketh a Deed of Feoffment of Lands or Tenements in divers Counties, there it behoveth in every County to have a livery of Seiſin.

¶ EN *un Countie.* A County is fetched from the French, and Shire from the Saxon. For Scyran in the Saxon tongue ſignifieth partiri, becauſe every County or Shire is divided and parted by certain meres and bounds from another, and in Latine is called Comitatus à comitando, for accompanying together. And for as much as the men of one County do not accompany together with men of another County at County Courts, Turnes, Lets, and other Courts 45 E.3.21.

therefore in judgment of Law they ſhall take no notice of a livery in another County to paſs any Lands in their own County. But of this more ſhall be ſaid hereafter.

Sect. 62.

¶ ET en alcun caſe home avera per le grant dun auter Fee ſimple, Fee Taile, ou Frankten. ſans liverie de ſeiſin. Sicome deux homes ſont, & chelcun deux eſt ſeiſie dun quantitie de terre deins un countie, & lun granta ſa terre a lauter en eſchange pur la terre que lauter ad, & en meſme le manner lauter granta ſa ter-

AND in ſome caſe a man ſhall have by the grant of another a Fee ſimple, Fee Tail, or Freehold without Livery of Seiſin. As if there be two men and each of them is ſeiſed of one quantity of Land in one County, and the one granteth his Land to the other in exchange for the Land which the other hath, and in like manner the other gran-

¶ HEre Littleton putteth a caſe where Freehold, &c. ſhall paſſe without livery of Seiſin, and thereupon putteth the caſe of an exchange of lands in one County that is good by Deed or without deed, without any livery, but if it be in ſeveral Counties there muſt be a Deed. Alſo of things that lye in grant, as Avowſons, Rents, Commons, &c. an exchange of them albeit they be in one County, is not good; unleſſe it be by Deed: and therefore Littleton putteth his Caſe mainly of land. And in caſe of a fine which is a Feoffment of Record, of a deviſe by a laſt will of a ſurrender, or a releaſe or confirmation to a 45 E.3.21. 3.E.4 10. 9 E.4.21. 7 H.4.1. 8 H.7.4. 28 H.6.2.

Vide ſect. 1.

Leſſee for years, or at will. In all theſe and ſome other caſes a Freehold, &c. (as hath been ſaid) may paſs without livery. But this word (Eſchange) which our Author here uſeth, is ſo appropriated by Law, to this caſe, as it cannot be expreſſed by any Periphraſis or circumlocution.

re a le primer Grantor en eſchange pur la terre que le primer Grantor ad, en ceo cas cheſcun poit enter en lauter terre iſſint miſe en eſchange ſans aſcun liverie de ſeiſin, & tiel eſchange fait per parolx de tenemts deins meſme le Countie ſans eſcript, eſt Aſſets bone.

teth his Land to the firſt Grantor in exchange for the Land which the firſt Grantor hath. In this caſe each may enter into the others land, ſo put in exchange without any Livery of Seiſin. And ſuch exchange made by parol of tenements within the ſame County without writing, is good enough.

¶ *En ceo caſe cheſcun poet enter, &c.* For by the exchange the parties, albeit the lands be all in one County, have no Freehold or Law in them before they execute the ſame by entrie; and therefore if one of them dieth, before the exchange be executed by entry, the exchange is void; for the heir cannot enter and take it as a Purchaſor, becauſe he was named onely to take by way of limitation of eſtate in courſe of deſcent.

9 E.4.38,39. 45 E.3.23,21. 45 E.3. Exchange 10.

Sect. 63.

¶ This is evident enough. But of what things an exchange may be made (which was a conveyance frequent in former times) is to be ſeen, and herein many things are to be obſerved.

¶ ET ſi les terres ou tenements, ſoient en divers counties, ceſt aſcavoire ceo que lun ad eſt un County & ceo que lauter ad eſt en auter Countie la il covient de aver un fait indent deſtre fait enter ceux de tiel eſchange.

And if the lands of Tenements be in divers Counties, *viz.* that which the one hath in one County and that which the other hath in another County, there it behoveth to have a deed indented, made between them of this exchange.

First, That the things exchanged (a) need not to be in eſſe at the time of the exchange made. (As if I grant a Rent newly created out of my lands in exchange for the mannor of Dale this is a good exchange.)

(a) 30 E.1. Eſch.15. 3 E.4.10. 9 E.4.21. 14 H.8.20.

(b) Secondly, There needeth no tranſmutation of poſſeſſion, and therefore a releaſe of Rent, or Eſtovers, or right to land in exchange for land is good.

(b) 6 E.36. 30 E.1. Ef.16. 16 E.3. Eſch.2. 7 H.34. 3 E.4.11.

The things (c) exchanged need not be of one nature. ſo they concern lands or tenements, whereof Littleton here ſpeaketh. As land for rent, or common, or any other inheritance which concern lands or tenements, or ſpiritual things, as tithes, &c. for temporal, and tenure by a divine ſervice for a temporal Deignioty, &c. But Annuities, or ſuch like which charge the perſon onely, and do not concern lands or tenements, cannot be exchanged for lands or tenements.

(c) 9 E.4.21. 9 E.3.56. 21 E.3.6.

Sect. 64, 65.

Eſtates. Vide ſect. 650.

¶ *EN eſchange, il covient que les eſtates ſoient egales, &c.* Equality in lands is threefold, viz. 1. equality in value:

¶ ET nota que en eſchange il covient q̄ les eſtates ſoient egales, que

And note that in exchanges it beloveth that the eſtates which both par-

am-

ambideux tielx parties averont en les tres iſſint eſchanges: car ſi lun voit e grant que lauter averoit la terre en Fée taile, pur le terre que il averoit del grant de le auter en Fée ſimple, coment que lauť ſoit agrée a tel, ceſt eſchange eſt voyde, pur ceo q̄ les eſtates ne ſont my egales.

ties have in the Lands ſo exchanged, be equall, for if the one willeth and grant that the other ſhall have his Land in fee tail for the Land which he hath of the grant of the other in Fee ſimple, although that the other agree to this, yet this exchange is void, becauſe the Eſtates be not equal.

¶ EN m̄ le maner eſt, lou il eſt grant e agrée enter eux, que lun avera en lun terre Fée taile, e lauter en lauter terre forſq̄ a terme de vie, ou ſi lun avera en lun terre Fée taile generall, e lauť en lauť terre Fée taile eſpeciall, &c. Iſſint touts foits il covient que en eſchange les eſtates dambideux parties ſoient egales ceſt aſcauoire, ſi lun ad Fée ſimple en lun terre, que lauter avera tiel eſtate en lauter terre, e ſi lun ad Fée taile en lun terre il covient que lauter aũa ſemblable eſtate en lauter terre, &c. & ſic de aliis ſtatibus, mes neſt my riens a charger del egal value des terres, car

IN the ſame manner it is, where it is granted and agreed between them. that the one ſhall have in the one Land Fee taile, and the other in the other Land but for terme of life, or if the one ſhall have in the one Land Fee tail generall, and the other in the other Land Fee taile eſpecial, &c. ſo always it behoveth that in exchange the Eſtates of both parties be equal, *viz.* if the one hath a Fee ſimple in the one Land that the other ſhall have like Eſtate in the other Land; and if the one hath Fee Taile in the one Land, the other ought to have the like eſtate in the other land, &c. and ſo of other Eſtates, but it is nothing to charge of the equall

Secondly, equality in quantity of eſtate given and taken. Thirdly, equality in quality or manner of the eſtate given and taken. But, as Littleton after ſaith, Equality in value of lands in an exchange is not requiſite, neither equality in the quality or manner of the Eſtate. And therefore if two joyntenants give lands jointly to two men, & their heirs, and the other in exchange of other lands to them and their heirs in common, this is a good exchange, and yet the manner of their eſtates is not equal, for the Eſtate of one party is joynt, and the other in common. And ſo it is if two men give Lands in exchange to A. and his heires for lands from A. to them two and their heirs, though the one party have a joynt eſtate, and the other a ſole eſtate, yet the exchange is good. The like is if the one land be of a defeaſible Title, and the other of an undefeaſible Title, yet the exchange is good till it be avoided.

(a) An exchange with the King is good, and yet the King is ſeiſed in his politick capacity, and the ſubject in his natural capacity. But equality of the quantity of the Eſtate is requiſite, as it appeareth clearly in the caſes put by Littleton. (b) But therein it is to be obſerved that it is not neceſſary that the parties to the exchange be ſeiſed of an equal Eſtate at the time of the exchange made: for if Tenant in Tail or a husband ſeiſed in the right of his wife, exchange Lands, and both by the exchange give a Fée ſimple, this is good untill it be avoided by the iſſue in Tail or by the wife after the death of the husband. (d) ſo as Littleton ſaith that in exchanges it behoveth that the eſtates which both parties have in the land ſo exchanged be equal, is as much to ſay, as that the eſtate reciprocally given in exchange ought to be equal; (e) But in a partition the eſtates allotted to either party

(a) Bracton lib. 5. fo. 389. 17 E. 3. 12. b. 4 H. 4. 2.

(b) 14 H. 6. 6 E. 2. Exch. 12. 8 E. 2. Cui in vita 28. 10 E. 2. Exch. 13. 16 E. 3. Exch. 2. 3 E. 3. 19. 12 H. 4. 12. 21 H. 6. 25. 13 E. 4. 3.

(d) 44 E. 3. 22. 38 E. 3. 15. 39 E. 3. 1. 9 E. 4. 21. 7 H. 4. 17. 39 E. 1. tit. Bre. 884. 30 E. 1. tit. Exchange, 15.

(e) F.N.B. 62. m.

need not to be equal as ſhall be obſerved in his proper place.

To ſhut up this point, There be five things neceſſary to the perfection of an exchange. 1. That the Eſtates given be equal. 2. That this word (excambium exchange) be uſed (f) which is ſo individually requiſite, as it cannot be ſupplyed by any other word, or deſcribed by any circumlocution: and herewith agreeth Littleton afterwards in this Chapter Sect. In the Booke of Domeſday I find, Hanc terram cambiavit Hugo Briccuino quod modo tenet comes Meriton, & ipſum ſcambium valet duplum.

Hugo de Belcamp pro eſcambio de warres.

(f) 9 E.4.21. 25 H.6.56. 19 H.6.27. 44 E.3.24. 50 Aſſ. Dorſet. Wadon. Belf. Sandeia. 9 E.4.39. 15 E.4.3. 45 E.3.30.

coment que la terre lun vault mult pluis que la terre de lauter ceo neſt riens a purpoſe: iſſint que les eſtates per leſchange fait, ſoient egales. Et iſſint en leſchange ſont deux grants car cheſcun partie grant ſon tre a lauter en eſchange, &c. & en cheſcun de lour grants mention ſerra fait de leſchange.

value of the Lands, for albeit that the Land of the one be of a farre greater value than the Land of the other, this is nothing to the purpoſe, ſo as the Eſtates made by the Exchange be equall. And ſo in an Exchange there be two grants, for each party granteth his Land to the other in exchange, &c. and in each of their grants mention ſhall be made of the exchange.

3. That there be an execution by entry or claim in the life of the parties, as hath been ſaid. (g) 4. That if it be of things that lie in grant, it muſt be by Deed. (h) 5. If the Lands be in ſeveral Counties there ought to be a Deed indented, or if the thing lye in grant albeit they be in one County.

(i) If an Infant exchange Lands, and after his full age occupy the Lands taken in exchange the exchange is become perfect, for the exchange at the firſt was not void, becauſe it amounted to a livery, and alſo in reſpect of the recompence) but voidable.

(g) 28 H.6.2. (h) 45 E. 3. 20. 7 H. 4. 11. (i) 4 E.2.tit. exch.10. 12 H. 4. 12. 45 E.3. eſchange 1.

¶ *Coment que lauter agree a cel ceſt eſchange eſt voide.* The Agreement of the parties cannot make that good which the Law maketh void.

Sect. 66.

¶ *Si home leſſa terre a un auter pur terme dans, coment que le leſſor moruſt devant*, &c. The reaſon is becauſe the intereſt of the Terme, (as hath been ſaid) doth paſs and veſt in the Leſſee before entry, and therefore the death of the Leſſor cannot divеſt that which was veſted before.

¶ *Atturney.* Is an ancient Engliſh word, and ſignifieth one that is ſet in the turn, ſtead, or place of another; and of theſe ſome be private (whereof our Authour here ſpeaketh) and ſome be publick, as Attorneys at Law, whoſe warrant from his Maſter is ponit loco ſuo talem Attornatum ſuum, which ſetteth in his turn or place ſuch a man to be his Attorney.

¶ Item ſi home leſſa terre a un auter pur term dans, coment que le Leſſor morust devant que le Leſſee enter en les tenements, uncore il poit enter en meſmes les tenements apres le mort le Leſſor, pur ceo que le Leſſee per force de le Leaſe ad droit maintenant daver les tenements ſolonq; le forme de le Leaſe. Mes ſi home fait un fait de Feoffment a un auter, & un letter dattorney a un

Alſo if a man letteth land to another for term of years, albeit the Leſſor dieth before the Leſſee entreth into the Tenements, yet he may enter into the ſame tenements after the death of the Leſſor, becauſe the Leſſee by force of the Leaſe hath right preſently to have the Tenements according to the forme of the Leaſe: but if a man maketh a Deed of Feoffment to another, and a Letter of Attorney to home

home a deliverer a luy ſeiſin per force de meſme le fait, uncore ſi liverie de ſeiſin ne ſoit fait en la vie celuy que feſoit le fait, ceo ne vault riens, pur ceo que lauter nad pas alcun droit daver les tenſts ſolongz le purport de le dit fait, devant le liverie de ſeiſin. Et ſi nul liverie de ſeiſin ſoit fait, donqz apres lemort celuy que fiſt le fait, le droit de tiels tenements eſt maintenant en ſon heire ou en alcun auter.

one to deliver to him ſeiſin by force of the ſame Deed, yet if liverie of ſeiſin be not executed in the life of him which made the Deed, this availeth nothing, for that the other had nought to have the Tenements according to the purport of the ſaid Deed before liverie of ſeiſin made, & if there be no liverie of ſeiſin, then after the deceaſe of him who made the Deed, the right of theſe Tenements is forthwith in his heire, or in ſome other.

¶ *Et un letter dattorney a un home a deliver a luy ſeiſin per force de meſme le fait.* Here firſt it appeareth that the authority to deliver ſeiſin (as hath been ſaid) muſt be by Deed: For Letter dattorney is as much as a Warrant of Attorney by Deed, for Literæ do ſignifie ſometimes a Deed, as Literæ acquietanciæ do ſignifie a Deed of Acquittance, and herewith (a) agreeth Britton. vid. Sect. 156. (a) 24 E.3.27.11. 2 H.7.13. Brit. 101. b.

2. Littleton here ſpeaks generally a un home, and few perſons are (b) diſabled to be private Attorneys to deliver ſeiſin: for Monkes, Infants, Feme coverts, Perſons attainted, out-lawed, excommunicated, Villeins, Aliens, &c. may be Attorneys. A Feme may be an Attorney to deliver ſeiſin to her Husband, and the Husband to the Wife, and he in the remainder to the Leſſee for life. (b) 21 E.4.18. Br. Feoffments. 50. 21 H.6.30. 13 E.3. Attorney 73.

3. It appeareth here that the Attorney muſt (c) purſue his Warrant, otherwiſe he doth not deliver ſeiſin by force of the Deed, as Littleton ſpeaketh. Now his authority is twofold, expreſſed in his Warrant, and implyed in Law, both which he muſt purſue, and firſt of his expreſs authority. A man ſeiſed of black acre and white acre makes a Deed of feoffment of both, and a Letter of Attorney to enter into both acres, & to deliver ſeiſin of both of them according to the form and effect of the Deed, and he enters into black acre and delivers ſeiſin ſecundum formam cartæ, this livery & ſeiſin is good, albeit he did not enter into both, nor into one in the name of both; for when he delivereth ſeiſin of one ſecundum formam cartæ, this is tantamount, and implyeth a livery of both. So when the Feoffment is made to two or more, and the Attorney is to make livery of ſeiſin to both, and the Attorney make livery of ſeiſin to one of the Feoffees, ſecundum formam & effectum cartæ, this is good to both, and yet in that caſe, he that is abſent may wave the livery. If the Leſſee for life make a Deed of feoffment, and a Letter of Attorney to the Leſſor to make livery, and the Leſſor maketh livery accordingly, notwithſtanding he ſhall enter for the forfeiture, but if Leſſee for years make a feoffment in fee and a Letter of Attorney to the Leſſor to make livery, and he make livery accordingly, this livery ſhall bind the Leſſor, and ſhall not be avoided by him: for the Leſſor cannot make livery as Attorney to the Leſſee, becauſe he had no Freehold whereof to make livery, but the Freehold was in the Leſſor. If the Leſſor make a Deed of feoffment, and a Letter of Attorney to the Leſſee for years to make livery, and he doth it accordingly, this ſhall not drown or extinguiſh his term, becauſe he did it as a miniſter to another, and in anothers right, and is accounted in judgment of Law the act of the other, and the Feoffee claimeth nothing by him. (c) 12 Aſſ.p'.24. 26 Aſſ.39. 11 H.4.3. 10 H.7. 11 H.7.13. 40 Aſſ.38. 27 Aſſ.61. 41 Aſſ.10. 41 E.3.17. Tr. 7 Eliz. in Com. Banco.

If one as Procurator or Attorney to another preſent to his own Benefice, he puts himſelf out of poſſeſſion, becauſe he cometh in by the induction and inſtitution of the Ordinary. If the Tenant deviſe that the Lord ſhall ſell the Land, and dieth, & the Lord ſelleth it; the Seigniory remains. But if the Lord or a Grantee of Rent charge had been alſo Ce' que uſe of the Land, and after the ſtatute of R. 3. and before the ſtatute of 27 H. 8. Ce' que uſe had made a feoffment in fee of the Land, albeit the Land paſſeth from the Feoffees and his feoffment is warranted by the power given to him by the ſtatute, yet the Seigniory or Rent charge is extinct by his feoffment, for that he hath not a bare authority as the Attorney hath. 17 E.3. 61.

If a man be diſſeiſed of black acre, and white acre, and a Warrant of attorney is made to enter into both and to make livery, there if the Attorney enter into black acre only, and makes livery ſecundum formam cartæ, there the livery of ſeiſin is void, becauſe he doth leſs than his Warrant, for the Eſtate of the Diſſeiſor in white acre cannot be deveſted without an Entry. But there

there is a diverſity betwæn an authority coupled with an intereſt, and a bare authority. For example, A cuſtom within a Mannor time out of mind of man uſed, was to grant certain Lands parcel of the ſaid Mannor in Fee ſimple, and never any Grant was made to any, and the heirs of his body, for life or for years, and the Lord of the ſaid Mannor did grant to one by copy for life, the remainder over to another and the heirs of his body: And it was (k) adjudged, that the Grant and remainder over was good, for the Lord having authority by cuſtom, and an intereſt withall, might grant any leſſer eſtate: for in this caſe, the cuſtom that enableth him to the greater, enableth him to the leſſer, Omne majus in ſe continet minus. But he that hath but a bare authority, as he that hath a Warrant of Attorney, muſt purſue his authority (as hath bæn ſaid) and if he do leſs it is void.

(k) Hil. 36 El. Rot. 492. Inter Stanton & Barnes, in Ejectione firmæ, in the Kings Bench.

A man make a Leaſe for life, and after make a Charter of Feoffment, with a Letter of Attorney to deliver ſeiſin, the Attorney enters upon the Leſſee, this is ſufficient to convey away the reverſion, for (that it may be ſaid once for all) liverie of ſeiſin being to perfect the common aſſurance of Lands, is always expounded favourably, ut res magis valeat quam pereat. And all this was adjudged and (l) reſolved by the Court of Common Pleas, and after affirmed by all the Judges of the Kings Bench in a Writ of Error.

2 & 3 Ph. & M. Dier 131. 17 El. Dier 40.

(l) Paſch. 31 El. Rot. 514. in Com. Banco inter Carter pl. & Claypole & alter def. in Ejectione firmæ, & in Briefe de Error. Hil. 32 El. Rot. 791. * Communis Error facit jus (ut dicitur) in contrarium.

And it is to be known, that a Dæd of Feoffment beginning Omnibus Chriſti fidelibus, &c. or Sciant præſentes & futuri, &c. or the like, a Letter of Attorney may be contained in ſuch a Dæd; for one continent may contain divers Dæds to ſeveral perſons: but if it be by Indenture betwæn the Feoffor on the one part, and the Feoffæ on the other part, * there a Letter of Attorney in ſuch a Dæd is not good, unleſs the Attorney be made a party in the Dæd indented.

Paſch. 3 El. in Com. Banc. in Yarhams Caſe.

Now the authority of an Attorney implied in the Law is, though the Warrant be general, to deliver ſeiſin, yet the Attorney cannot deliver ſeiſin within the view, for his Warrant is intendable in Law of an actual and expreſs livery, and not of a livery in Law. and ſo hath it bæn reſolved. See more hereof here next following.

¶ *Uncore ſi liverie & ſeiſin ne ſoit fait en la vie celuy que feſoit le fait.* Here albeit the Warrant of Attorney be indefinit, without limitation of any time, yet the Law preſcribeth a time, as Littleton here ſaith in the life of him that made the Dæd, but the death not only of the Feoffor, of whom Littleton ſpeaketh, but of the Feoffæ alſo is a countermand in Law of the Letter of Attorney and the Dæd it ſelf is become of none effect, becauſe in this caſe nothing doth paſs before livery of ſeiſin. For if the Feoffor dieth, the Land deſcends to his heir, and if the Feoffæ dieth, livery cannot be made to his heir, becauſe then he ſhould take by purchaſe, where heirs were named by way of limitation. And herewith agreeth Bracton, Item oportet quod donationem ſequatur rei traditio, etiam in vita donatoris & donatorii. Therefore a Letter of Attorney to deliver livery of Seiſin after the deceaſe of the Feoffor is void.

22 H. 6. 6.

Bract. li. 2, fo. 16. 40 Aſſ. P. 38. 29 H. 6, 7. a. 14 E. 4. 2. 18 E. 3. 16. b. 11 H. 7. 13, &c.

Fourthly, in all caſes the Attorney muſt purſue the Warrant in ſubſtance and effect that he hath to deliver Seiſin.

Fifthly, All this is to be underſtood of ſole perſons, or of a Corporation or Body conſiſting of one ſole perſon, or a Biſhop, Parſon, &c. But it holdeth not in a Corporation aggregate of many perſons capable. And therefore if a Mayor or Commonalty make a Charter of feoffment, and a Letter of Attorney to deliver Seiſin, the livery of Seiſin is good after the deceaſe of the Mayor, becauſe the Corporation never dieth. The like of a Dean and Chapter. Et ſic de ſimilibus.

18 H. 8. 3. 11 H. 7. 19.

Laſtly, If the Leſſor by his Dæd licenſe the Leſſee for life or years, (which is reſtrained by condition not to alien without licenſe) to alien, and the Leſſor dieth before the Leſſee doth alien, yet is his death no countermand of the licenſe, but that he may alien, for the licenſe exempteth the Leſſee out of the penalty of the Condition, and it was executed on the part of the Leſſor as much as might be. And ſo was it reſolved, Michael. 3. Jacob. in Communi Banco. As if the King doth licenſe to alien in Mortmain, and dieth, the licenſe may be executed after.

Mich. 3. Ja. in Com. Banc. F. N. B. 223. 2 E. 3. offi. de Court. 29. Stanf. Prer. 30.

Sect. 67.

¶ *Si le Leſſee fait waſte.* Waſte, Vaſtum dicitur à vaſtando, of waſting and depopulating: and for that Waſte is often allea-

¶ Item ſi Tenements ſoient leſſes a un home pur term de demy an, ou pur le

Alſo if Tenements be let to a man for terme of half a yeare, or for a quarter of a

ged

quarter de un an, &c. En tiel caſe, ſi le leſſee fait waſt, l' leſſor avera envers luy Briefe de Waſt, & le Briefe dirra, Quod tenet ad terminum annorum: Mes il avera un ſpeciall Declaration ſur le veritie de ſon matter, & le Count nabatera le Briefe, pur ceo que il puit aver nul auter Briefe ſur le matter.

years, &c. In this caſe if the Leſſee commit waſte, the Leſſor ſhall have a Writ of waſte againſt him; and the Writ ſhall ſay, *Quod tenet ad terminum annorum:* but he ſhall have an eſpecial declaration upon the truth of his matter, and the Count ſhall not abate the Writ, becauſe he cannot have any other Writ upon the matter.

ged to be in timber, which we call in Latine Maremium, or Mareſnium or Mareſmium, it is good to fetch both of them from the original. Firſt, Timber is a Saxon word. Secondly, Maremium is derived of the French word Marreinn, or Marrein, which properly ſignifieth Timber.

In action of waſte doth lye againſt Tenant by the curteſie, tenant in dower, tenant for life, for years, or half a year, or gardian in Chivalry, by him that hath the immediate eſtate of inheritance, for waſte or deſtruction in houſes, gardens, woods, trees, or in lands, meadows, &c. or in exile of men, to the diſheriſon of him in the reverſion or remainder. There be two kinds of waſtes, viz. voluntary or actuall, and permiſſive. V. Marlb. cap. 23. 2. part of the Inſtit.

(a) Waſte may be done in houſes, by pulling or proſtrating them down, or by ſuffering the ſame to be uncovered, whereby the ſpars or rafters, plaunchers, or other timber of the houſe are rotten. (b) But if the houſe be uncovered when the Tenant cometh in, it is no waſte in the Tenant to ſuffer the ſame to fall down. But though the houſe be ruinous at the Tenants coming in, yet if he pull it down it is waſte, unleſs he re-edifie it again. (c) Alſo if glaſſe windows (though glaſed by the Tenant himſelf) be broken down or carried away, it is waſte, for the glaſſe is part of his houſe. And ſo it is of wainſcot, benches, doors, windows, furnaces, and the like, annexed or fixed to the houſe, either by him in the reverſion, or the Tenant. (a) 34 E. 3. Waſt. 145. (b) 40. Aſſ. p. 22. 2 Mar. Dyer 117. 23 H. 6. 24. 10 H. 7. 2. 44 E. 3. 44. 29 E. 3. 33. lib. 4. fol. 63. Herlakendens caſe. (c) 22 H. 6. 18. 12 H. 8. 1. 13 H. 7. 21. 22 E. 4. 18. 21 E. 4. 39. 10 H. 7. 2. Reg. Judic. 26.

(d) Though there be no timber growing upon the ground, yet the Tenant at his peril muſt keep the houſes from waſting. If the Tenant do or ſuffer waſte to be done in houſes; yet if he repair them before any action brought, there lieth no action of waſte againſt him, but he cannot plead, Quod non fecit vaſtum, but the ſpecial matter. (d) 44 E. 3. 21 38. Aſſ. 1. 4 E. 3. Waſt. 21. 10 El. Dyer 276. lib. 5. fol. 119. in Whelpdales caſe. 19 E. 3. Waſt. 30. 44 E. 3. 44.

A wall uncovered when the Tenant cometh in is no waſte if it be ſuffered to decay. (e) If the Tenant cut down or deſtroy any fruit trees growing in the garden or orchard, it is waſte, but if ſuch trees grow upon any of the ground which the Tenant holdeth out of the Garden or Orchard, it is no waſte. (e) 7 H. 6. 38. 44 E. 3 44.

(f) If the Tenant build a new houſe, it is waſte; and if he ſuffer it to be waſted, it is a new waſte, (g) If the houſe fall down by tempeſt, or be burnt by lightning, or proſtrated by enemies, or the like, without a default of the Tenant, or was ruinous at his coming in, and fall down, the Tenant may build the ſame again with ſuch materials as remains, and with other timber which he may take growing on the ground for his habitation, but he muſt not make the houſe larger than it was. If the houſe be diſcovered by tempeſt, the Tenant muſt in convenient time repair it. (f) 42 E. 3. 21. 49 E. 3. 2. 9 H. 6. 52. 17 E. 2. Waſt. 118. (g) Lib. 4. fol. 63. Herlakendens caſe, 43 E. 3. 6. 26 E. 3. 76. 11 H. 4. 32. 12 H. 4. 5. 22 H. 6. 18. 19 E. 3. Waſt. 30.

(h) If the Tenant of a Dove-houſe, Warren, Parke, Vivary, Eſtangues, or the like, do take ſo many, as ſuch ſufficient ſtore be not left as he found when he came in, this is waſte; and to ſuffer the pale to decay, whereby the Deer are diſperſed, is waſte. (h) Temps E. 1. Waſt. 128. Brit. fol. 34. 5 R. 2. Waſt. 97. 12 H. 8. 1 Pl. Com. 322. 7 H. 3. Waſt. 141.

And it is to be obſerved, that there is waſte, deſtruction, and exile; Waſte properly is in houſes, gardens, (as is aforeſaid) in timber trees, (viz. Oke, Aſh, and Elm, and theſe be timber trees in all places) either by cutting of them down, or topping of them, or doing any act whereby the timber may decay. Alſo in Countries where timber is ſcant, and Beeches or the like are converted to building for the habitation of men, or the like, they are alſo counted timber. (i) If the Tenant cut down timber trees, or ſuch as are accounted timber, as is aforeſaid, this is waſte; and if he ſuffer the young germins to be deſtroyed, this is deſtruction. (k) So it is, if the Tenant cut down underwood; (as he may by law) yet if he ſuffer the young germins to be deſtroyed, or if he ſtub up the ſame, this is deſtruction. (l) 22 H. 6. 12. 2. 9 H. 6. 166. 11 H. 6. 1. F. N. B. 59. m. (k) 20 E. 3. Waſt. 32. 10 H. 7. 2. 42 E. 3. 6. b. 5 E. 4. 100. 41 E. 3. Waſt. 82. 20 E. 3. Waſt. 32. 12 E. 4. 1.

(l) Cutting down of willows, beech, birch, aſpe, maple, or the like, ſtanding in the defence and ſafegard of the houſe, is deſtruction. (m) If there be a quickſet fence of white thorne, if the Tenant ſtub it up, or ſuffer it to be deſtroyed this is deſtruction; and for all theſe and the like deſtructions an action of waſte lieth. (r) The cutting of dead wood, that is, Ubi arbores ſunt aridæ, mortuæ, cavæ, non exiſtentes maremium, nec portantes fructus, nec folia in æſtate, is (m) 46 E. 3. 17. 9 H. 6. 10. 12 H. 8. 1. (n) 16 El. Dyer. 332. 20 E. 3. Waſt. 32. F. N. B. 59. n.

no

no waſte; but turning of trees to coales, for fuel, when there is ſufficient dead wood, is waſte; (o) if the Tenant ſuffer the houſes to be waſted, and then fell down timber to repair the ſame, this is a double waſte. (p) Digging for gravel, lime, clay, brick, earth, ſtone, or the like; or for mines of metal, coal, or the like hidden in the earth, and were not open when the Tenant came in, is waſte; but the Tenant may dig for gravel or clay for the reparation of the houſe, as well as he may take convenient timber trees.

(q) It is waſte to ſuffer a wall of the ſea to be in decay, ſo as by the flowing and reflowing of the ſea, the meadow or marſh is ſurrounded, whereby the ſame becomes unprofitable: but if it be ſurrounded ſuddenly by the rage and violence of the ſea, occaſioned by wind, tempeſt, or the like, without any default in the Tenant. (r) this is no waſte puniſhable. So it is, if the Tenant repair not the banks or wals againſt rivers, or other waters, whereby the meadows or marſhes be ſurrounded, and become ruſhy and unprofitable.

(s) If the Tenant convert arable land into wood, or è converſo, or meadow into arable, it is waſte, for it changeth not onely the courſe of his husbandry, but the proof of his evidence.

(t) The Tenant may take ſufficient wood to repair the walls, pales, fences, hedges, and ditches, as he found them, but he can make no new: and he may take alſo ſufficient plowbote, firebote, and other housebote.

The Tenant cutteth down trees for reparations and ſelleth them, and after buyeth them again, and imploys them about neceſſary reparations, yet it is waſte by the tendition: he cannot ſell trees, and with the mony cover the houſe: Burning of the houſe by negligence or miſchance is waſte.

(u) If a man make a leaſe for life, and by deed grant, that if any waſte or deſtruction be done, that it ſhall be repelled by neighbours, and not by ſuit or plea, notwithſtanding an Action of waſte ſhall lye; for the place waſted cannot be recovered without a plea.

(x) Bracton, Fleta, and Britton, do uſe the ſame diviſion as is aforeſaid, viz. Vaſtum, Deſtructio, & Exilium, in their proper ſignification.

Now ſomewhat is to be ſpoken of exile or deſtruction of men; Exile or deſtruction of Villains, or Tenants at will, or making them poor where they were rich when the Tenant came in, whereby they depart from their tenures, is waſte. (a) And yet the Statute of Glouc' ſpeaketh not of exile, but it is comprehended under the general word of Waſte. The Statute of W. 1. hath deſtructionem, the Statute of Magna Charta hath vaſtum & deſtructionem, the Statute of Merlebridge hath vaſtum, venditionem & exilium in domibus, boſcis, vel hominibus, &c.

But waſte and deſtruction in their larger ſenſe are words convertible. (b) Item de hoc quod dicit vaſtum & exilium, ſciendum eſt quod non ſunt referenda ad eundem intellectum, ſed vaſtum & deſtructio fere idem ſunt: vaſtum idem eſt quod deſtructio, & è converſo, & ſe habent ad omnem deſtructionem generaliter.

(c) Vaſtum autem & deſtructio fere æquipollent & convertibiliter ſe habent in domibus, boſcis, & gardinis; ſed exilium dici poterit, u m ſervi manumittantur & à tenementis ſuis injurioſe ejiciantur: fortuna autem & ignis vel hujuſmodi eventus inopinati, omnes tenentes excuſant.

(d) No perſon ſhall have an Action of waſte, unleſſe he hath the immediate eſtate of inheritance but ſometime another ſhall joyn with him for conformity. As if a reverſion be granted to two, and to the heirs of one, they two ſhall joyn in an Action of waſte: and in like ſort the ſurviving Coparcener, and the Tenant by the courteſie ſhall joyn in an Action of waſte: and if two joyntenants be, and to the heirs of one of them, and they make a leaſe for life, they ſhall joyn in an action of waſte. (e) If the eſtate tail determine, hanging the Action of waſte and the plt. become Tenant in tail after poſſibility, the Action of the waſte is gone. (f) If the Tenant doth waſte, and he in the reverſion dieth, the heir ſhall not have an action of waſte, for the waſte done in the life of the Anceſtor; nor a Biſhop, Maſter of an Hoſpital, Parſon, or the like, in the time of the Predeceſſor. (g) And ſo if Leſſee for years doth waſte, and dieth, an action of waſte lieth not againſt the Executor or Adminiſtrator, for waſte done before their time: But if two Coparceners be of a reverſion, and waſte is committed, and the one of them dye, the Aunt and the Neece ſhall joyn in an action of waſte.

(h) If lands be given to two and the heirs of one of them, he that hath the Fee ſhall not have an Action of waſte upon the Statute of Glouc': for that they are Joyntenants, but his heir ſhall have an action of waſte againſt Tenant for life.

Note, after waſte done there is a ſpecial regard to be had to the continuance of the reverſion in the ſame ſtate that it was at the time of the waſte done; for if after the waſte, he granteth it over, though he taketh back the whole eſtate again, yet is the waſte diſpuniſhable. So if he grant the reverſion to the uſe of himſelf and his wife, and of his heirs, yet the waſte is diſpuniſhable and ſo of the like, becauſe the eſtate of the reverſion continueth not, but is altered, and conſequently the Action of waſte for waſte done before (which conſiſts in privity) is gone.

(i) A Prohibition of waſte did lye againſt Tenant by the Curteſie, Tenant in Dower, and a Gardian in Chivalry by the Common Law, but not againſt tenant for life, or years, becauſe they

(o) 44 E.3.44. 20 E.3. Waſt.32. F.N.B. 59. b. 19 E.3. Waſt.30.
(p) 22 H.6.18. b. 9 E.4.35. 41 E.3. Waſt.82. 17 E.3.7. 9 H.6.66. 2 H.7.24. F.N.B. 59. n. & 149. c. 20 E.3. Waſt.32.
(q) Anno 6 El. Of the Report of Juſtice Daliſon, In Griffins caſe, 17 E.3.65. Brit.f.168.b.
(r) 20 H.6.1. F.N.B. 59. n. 6 El. ubi ſupra.
(s) 28 H.8. Dyer 37. 22 H.6.24. 10 H.7.5. a. 44 E.3.44.
(t) 16 El. Dyer 332. 21 H.6.47. Lib.5. F.4. 00. 12 E.3. Waſt.28. 48 E.3.25. Temps E.1.123. 20 E.3. Waſt.32. 19 E.3. Waſt.30.
(u) 3 E.3. Waſt.5. Bract. lib.4. fol.315.
(x) Bracton fol.168. Fleta lib.1. cap.11. 16 H.3. Waſt.135. 3 E.2 tit. Waſt.2. 17 E.2. Waſt 118. 10 H.7. 2 H.6.11. 9 H.6.52. 11 E.2. Waſt.113. F.N.B. 56 H. & 55. c. Regiſt. judic.25.
(a) Glouc cap.5. W.1. cap.21. Magna Charta, cap.4. Merleb. cap.23.
(b) Bract. lib.4. fol.316, & 317.
(c) Fleta lib.1. cap.11.
(d) 7 E.3.54. b. 2 H.5.7. 22 H.6.24. 18 H.7. 27 H.8.13. F.N.B. 59. f. 8. R.2. Waſt.147.
(e) 2 H.4.22.
(f) 2 H.4.2.
(g) 10 E.4.1. 49 E.3.25. 22 H.8. tit. Waſt. Br. 38 E.3.17. 44 E.3.8. 45 E.3.8. 46 E.3.31. 11 E.2. Waſt.115. 2 Mar. Waſt.117. 8 E.2. Waſt.110.
(h) 24 E.3.27. 50 E.3.3. 8 H.6.13.
(i) Bract. lib.4. fol. 315, 316, 317. Fleta lib.1. cap.11. Britt. fol. 168. Doct. & Stud. lib.2 cap.2. 12 H.4.3.10. 20 H.3. Waſt.142. 20 H.6.1. 4 H.3. Waſt. 140. 9 H.3. ibid.136.

they came in by their own act, and he might have provided that no waste should be done. (i) A Tenant by the Courtesie or in Dower can hold of none but of the heir, and his heirs by descent; and therefore if they grant over their whole estate, and the Grantee doth waste, yet the heir shall have an Action of waste against them, and recover the land against the Assignee: but if the heir either before the assignment had granted, or after the assignment doth grant, the reversion over, the stranger shall have an action of waste against the Assignee, because in both Cases the privity is destroyed: in all other cases the action of waste shall be brought against him that did the waste (for it is in nature of a trespass) unless it be in the case of a ward; (k) for there if the Gardian doth waste and assigne over, the Action lieth against the Assignee. (l) A Gardian shall not be punished for waste done by a stranger, it is so penal unto him, for he shall lose the Wardship both of the body and of the land, though the waste be but to the value of twenty shillings; and if that sufficeth not to satisfie for the waste, then he shall recover damages of the waste, over and above the losse of the Ward. But Tenant by the Curtesie, Tenant in Dower, Tenant for life, years, &c. shall answer for the waste done by a stranger, and shall take their remedy over. (m) But if there be two Joyntenants of a ward, and one of them do waste, both shall answer for it.

(i) F.N.B. 56. c. & f. Temps E.1. Wast. 122. 18 E.3.3. 30 E.3.16. 38 E.3.31. 11 H.4.18. 4 E.3. 25. Regist. 72. lib. 9. fol. 23. Walkers case, lib. 9. fol. 142. Beaumonts case.

(k) 27 E.3 Br. 26 E.3. Waste 10.

(l) 12 H.4.8. Bract. lib. 4. 316, 317. Fleta lib. 2. c. 11. Britt. 168. 34 E.3. Wast. 146. 44 E.3.27. F.N.B. 59. a. & 60. g. & T.

(m) 33 E.3. Wast. 6.

(n) If the Gardian doth waste, and the heir within age bring an Action of waste, the Gardian shall lose the Wardship as is aforesaid; but if the heir bring an action of waste at his full age, then he shall recover treble damages, for then he cannot lose the Wardship.

(n) 44 E.3.27. 48 E.3.10. F.N.B. 60. t. 12 H. 4.3. 19 E.2. Waste. 117. 41 E.3. Wast. 81. 3 E.2. Wast. 3. 7 E.3.12.

(o) An Infant, and Baron, and Feme, shall be punished for waste done by a stranger, and so shall the wife that hath the estate by survivor for the waste done by the husband in his life time, if she agree to the estate, though there hath been variety of opinions in our Books.

(o) 15 H.3. Wast. 16. temps E.1. Wast. 128. 2 H. 4.3. a. 3 E.3.18. 76. 11 Ass. 11. 21 H.6.24. b. 33 H. 6.31. a. 42 E.3.22. 19 E.3. breve 246. 46 E.3.25. 7 H.6 2.b. 3 E.3.46. 10 E. 3.17,18. 9 E.3.42. 9 E.3. breve 246. 17 E.4.7. 9 H.6.52. F.N.B. 56 B. Doct. & Stud. lib.2. cap.1. 23 H.8. Wast. 138. lib.8. fol.44. Willinghams case.

(p) But if Feme tenant for life take a husband, and the husband doth waste, and the wife dieth, no Action of waste lieth against the husband in the Tenuit, for he was seised but in jure uxoris, and his wife was Tenant of the Freehold; but if a Feme be possessed of a term for years, and take husband, and the husband doth waste, and the wife dieth, the husband shall be charged in an Action of waste, for the law giveth the term to him.

(p) Lib.5. fol.75. Cliftons case. 46 E.3.25. 46 E.3. Wast. Statham. 10 H.6. 11, 12.

(q) If tenant for life grant over his estate upon condition, and the Grantee doth waste, and the Grantor re-entereth for the condition broken, the action of waste shall be brought against the Grantee, and the place wasted recovered.

(q) 30 E.3.16.

(r) If a lease for life be made to a Villein; and waste is done, the Lord entreth, he shall not be punished for the waste done before; but for waste done after, he shall.

(r) 48 E.3.19.

(s) In Occupant shall be punished for waste, and so if an estate be made to A. and his heirs during the life of B, A. dieth, the heir of A. shall be punished in an action of waste.

(t) If a lease be made to A. for life, the remainder to B. for life, the remainder to C. in fee, in this case where it is said in the Register, and in F. N. B. that an action of waste doth lye, it is to be understood after the death or surrender of B. in the mean remainder; for during his life, no Action of waste doth lye.

But if a lease for life be made, the remainder for years, the remainder in fee, an action doth lye presently during the term in remainder; for the mean term for years is no impediment.

But if a man make a lease for life or years, and after granteth the reversion for years, the Lessor shall have no action of waste during the years, for he himself hath granted away the reversion, in respect whereof he is to maintain his action. (*) Otherwise it is, if he had made a lease in reversion, which had been but a future interest, for there an action of waste lieth during the term, and so is the Book to be understood, and the term shall be saved in that case.

(t) Lib.6. fol.37. le Dean and Chapt. of Worcest. case, lib.10. fol. 9. b. 4 E.3.18. Cotes case, 3 E.3. 18. F.N.B. 58. c. & 59. b. 50. E.3.3. 33 E.3. Wast.144. 11 E.3. reseit. 118. 10 E.4.9. Regist.74. lib.2. fol. 92. inter Paget & Carie in Binghams case. lib.5. fol. 76. Pagets case. lib.10. fol.44. Jennings case. F.N.B. 59. h. 4 E.3.18.

(*) 4.E.3. 18 F.tit.Wast. 18.

(u) No action of waste lieth against a Gardian in Socage, but an account or trespasse, nor against Tenant by Statute staple, &c. or Elegit.

(u) Merlebridge cap.17. 21 E.3.30. 16 E.3. tit. Wast.100. 14 E.3. Wast. 107. 2 E.2. Wast.1. 38 H.6. Wast.9. 32 H.6.7. F.N.B. 59. E.

(w) If Tenant for life or years, or their assigne make a grant over, and notwithstanding take the profits, an action of waste lieth against him, by him in the reversion or remainder, by the Statute, Nota.

(w) 11 H.6. cap.5. lib.9. fol. 77. Boothes case.

(x) If waste be done sparsim here and there in woods, the whole wood shall be recovered, or so much wherein the waste sparsim is done. And so in houses so many rooms shall be recovered wherein there is waste done; but if the waste be done sparsim throughout, all shall be recovered. It hath been said, that if the Hall be wasted, the whole House shall be recovered, because the whole house is denominated of the Hall: but later authority is to the contrary.

(x) 8 E.2. Wast. 112. 4 E.2. Wast.136. 4 E.2.32. 15 H.7. 11. 15 E.3. Wast.134. Temps E.1. Wast.134. 18 H.8.1.

(y) There is waste of a small value, as Bracton saith, Nisi vastum ita modicum sit proper quod non sit inquisitio facienda. Yet trees to the value of three shillings and four pence hath been adjudged waste, and many things together make waste to a value. But let us now return to our Author.

(y) Bract. lib.4. fol.316. 38 E.3.7.b. 34 E.3. Wast 146. 14 H.4.11.b. F.N.B. 60. c. Temps E.1. Wast.134. 19 H.6.8.

¶ *Briefe de waste.* See in the Register five several Writs of waste; Two at the Common Law for waste done by Tenant in Dower, or the Gardian; and three by special or Statute Law, for waste done by Tenant for life, for years, and Tenant by the Curtesie.

¶ *Briefe*

(x) Vi. Bract. lib. 5. fol. 413. b. Fleta lib. 2. cap. 12. See the second part of the Institutes, W. 2. cap. 24.

¶ *Briefe Dirra.* The Writs original of the Register (z) (as Bracton saith) formed, and of course had their first authority by Act of Parliament, and therefore without an Act of Parliament they cannot be altered or changed, which is proved by the Statute of W. 2. cap. 24. whereby remedy is provided in many cases. But hear what Bracton saith, Sunt quædam Brevia formata in suis casibus, & quædam de cursu, quæ concilio totius regni sunt approbata; quæ quidem mutari non possunt, absque eorundem contraria voluntate. Magistralia autem sæpe variantur secundum varietatem casuum, &c. And this is the reason that in this case of half a year the words of the Writ shall be without change, Quod tenet ad terminum annorum; and the pl' must make a special declaration according to his case, for otherwise he should be without remedy. In this particular case the statute of Glouc' c. 5. which giveth the Action of waste against the Lessee for life or years (which lay not against them at the Common Law) speaketh of one that holdeth for term of years in the plural number and yet here it appeareth by the authority of Littleton, That although it be a penal Law, whereby treble damages and the place wasted shall be recovered; yet a tenant for half a year being within the same mischief, shall be within the same remedy, though it be out of the letter of the law, for Qui hæret in litera, hæret in cortice, which is an excellent example, whereupon in many like cases a man may settle a certain judgment. You may observe in the said ancient Authors what remedy was given for waste at the Common Law, and against whom, and what was adjudged waste, destruction and exile.

De vasto. Bract. lib. 4. fol. 315, 316, 317. Fleta li. 1. ca. 11. & li. 5. ca. 23. Britton fol. 162. & 168. 46 E. 3. 31. F.N.B. 60. c. 4 E. 4. 13. 37 H. 6. 16. b. 7 H. 7. 2. 14 H. 8. 12. 18 E. 3. 27.

Vide Marlebridge cap. 23. 2. part of the Institutes.

In many cases a tenant for life or years may fell down timber to make reparations, albeit he be not compellable thereunto, and shall not be punished for the same in any action of waste. As (a) if a house be ruinous at the time of the lease made, if the lessee suffer the house to fall down he is not punishable, for he is not bound by law to repair the house in that case. And yet if he cut down timber upon the ground so letten, and repair it, he may well justifie it; and the reason is, for that the law doth favour the supportation and maintenance of houses of habitation for mankind: And therefore if two or more Joyntenants or tenants in common be of a house of habitation, and the one will not repair the house, the other shall have by the law a Writ De reparatione facienda, and the Writ saith, Ad sustentationem ejusdem domus teneantur. So it is if the Lessor by his Covenant undertaketh to repair the houses, yet the lessee (if the lessor doth it not) may with the timber growing upon the ground repair it, though he be not compellable thereunto. In the same manner, if a man make a lease of a house and land without impeachment of waste for the house; yet may the Lessee with the timber upon the ground repair the house; though he may utterly waste if he will, and so in many other cases. A man hath land in which there is a Mine of coals, or of the like, and maketh (b) a lease of the land (without mentioning any Mines) for life or for years, the lessee for such Mines as were open at the time of the lease made, may dig and take the profit thereof. (c) But he cannot dig for any new Mine, that was not open at the time of the lease made, for that should be adjudged waste. And if there be open mines, and the owner make a lease of the land, with the mines therein, this shall extend to the open mines onely, and not to any hidden mine; but if there be no open mine, and the lease is made of the land together with all mines therein; there the lessee may dig for mines, and enjoy the benefit thereof, otherwise those words should be void. I have been the more spacious concerning this learning of waste, for that it is most necessary to be known of men.

(a) 12 H. 8. 1.

F.N.B. 127.

(b) 17 E. 3. 7. 9 H. 6. 66. 22 H. 6. 18. 9 E. 4. 35. 12 E. 4. 8. F.N.B. 149. c. & 59. n.

(c) Lib. 5. fo. 12. Sanders case.

Now hath Littleton spoken of an estate for life, and an estate for years in several persons. Now let us see how they stand simul and semel in one person.

If a man letteth lands to another for life, the remainder to him for 21 years, he hath both estates in him so distinctly, as he may grant away either of them; for a greater estate may uphold a lesser, but not è converso; and therefore if a man make a lease to one for 21 years, the remainder to him for term of his life, the lease for years is drowned.

(d) 19 E. 2. 2. Covenant 25. 19 E. 3. Covenant 24. 32 E. 3. Quid juris cla. 5. 17 E. 3. 29. 46 E. 3. 31. 40 E. 3. 5. 11 H. 4. 34. 14 Eliz. Dyer 309. M. 40. & 41 Eliz. in Com. Banc. Rot. 22. 15. in scacc. inter Sparke & Sparke. Hill. 42. Eliz. Sir John Savages case in Curia Wardorum.

(d) If a man make a lease for life to one, the remainder to his Executors for 21 years, the term for years shall vest in him; for even as Ancestor and Heir are correlativa, as to inheritance: (as if an estate for life be made to A. the remainder to B. in tail, the remainder to the right heirs of A. the Fee vesteth in A. as it had been limited to him and his heirs) even so are the Testators and the Executors correlativa as to any Chattel. And therefore if a lease for life be made to the Testator, the remainder to his Executors for years, the Chattle shall vest in the Lessee himself, as well as if it had been limited to him and his Executors.

CHAP.

Chap. 8. *Sect.* 68.

Of Tenant at Will.

¶ Tenant a volunt eſt ou terres ou tenements ſont leſſes per un home a un auter, a aver & tener a luy a la volunt le Leſſor, per force de quel leaſe le Leſſee eſt en poſſeſſion, en tiel cas le leſſee eſt appel tenant a volunt, pur ceo que il nad aſcun certaine ne ſureeſtate, car le Leſſor luy poit ouſter a quel temps que il luy pleſroit: uncore ſi le leſſee emblea la tre & le Leſſor apres lembleer, & devant q̄ les bleſs ſont matures luy ouſta, uncore le leſſee avera les bleſs, & aūra frāk entr̄, egreſs & regreſs a ſeier & de carier les bleſs, pur t̄ q̄ il ne ſcavoit a quel temps le leſſor voloit etre ſur luy. Auterūt eſt ſi tenant pur term dans q̄ conuſt le fine de ſon terme emblea ſa terre, & le terme eſt finy devant que les bleſs ſont matures, en ceo cas le leſſor, ou celuy en la reverſion

TEnant at will is, where lands or tenements are let by one man to another to have and to hold to him at the will of the Leſſor, by force of which Leaſe, the Leſſee is in poſſeſſion, in this caſe the leſſee is called Tenant at wil, becauſe he hath no certain nor ſure eſtate, for the Leſſor may put him out at what time it pleaſeth him. Yet if the Leſſee ſoweth the land, and the Leſſor after it is ſown, and before the Corn is ripe put him out, yet the Leſſee ſhall have the Corn, and ſhall have free entry, egreſſe and regreſſe to cut and carry away the Corn, becauſe he knew not at what time the Leſſor would enter upon him. Otherwiſe it is if Tenant for years, which knoweth the end of his term, doth ſow the land, and his Term endeth before the Corn is ripe; In this caſe the Leſſor, or he in the reverſion ſhall

¶ *Tenant á volunt eſt ou terres ou tenements, ſont leſſes per un home a un autera aver & tener a luy a la volunt le Leſſor, &c.* It is regularly true that every Leaſe at will, muſt in Law be at the will of both parties, and therefore when the Leaſe is made. To have and to hold at the will of the Leſſor, the Law implyeth it to be at the will of the Leſſee alſo; for it cannot be onely at the will of the Leſſor, but it muſt be at the will of the Leſſee alſo. And ſo it is when the Leaſe is made, To have and to hold at the will of the Leſſee, this muſt be alſo at the will of the Leſſor; and ſo are all the Books, that ſeem prima facie to differ clearly reconciled. Fleta lib. 3. cap. 13.

¶ *Pur ceo que il nad aſcun certaine ou ſure eſtate, &c.* Alia poſſeſſio eſt precaria & alia pro prece conceſſa: ut ſi quis ſine ſcripto conceſſerit alicui habitationem vel uſum-fructum in rē ſua tenenda ad voluntatem ſuam; hæc quidem poſſeſſio precaria eſt & nuda. eo quod tempeſtive & intempeſtive pro voluntate Domini poterit revocari. 18 H.6.1. 38 H.6.21. 9 E.4.2. b. 10 E.4.18. b. 21 H.7.38. 13 H.8.16. 14 H.8.11.14.

¶ *Uncore ſi le Leſſee emblea la terre, & le leſſor apres l' embleer, &c.* The reaſon of this is, for that the eſtate of the Leſſee is uncertain, and therefore leſt the ground ſhould be unmanured, which ſhould be hurtfull to the Common-wealth, he ſhall Fleta lib. 3. cap. 15.

shall reap the Crop which he sowed in peace, albeit the Lessor doth determine his will before it be ripe. And so it is if he set roots, or sowe hemp, or flax, or any other annuall profit, if after the same be planted, the Lessor ousts the lessee, or if the Lessee dieth, yet he or his Executors shall have that years crop. But if he plant young fruit trees, or young Oakes, Ashes, Elms, &c. or sow the ground with Acorns, &c. there the Lessor may put him out notwithstanding, because they will yield no present annuall profit. And this is not onely proper to a Lessee at will, that when the Lessor determines his will that the Lessee shall have the corn sown, &c. but to every particular Tenant that hath an estate incertain, for that is the reason which Littleton expresseth in these words (Pur ceo que il nad ascun certaine ou sure estate.) And therefore if Tenant for life soweth the ground and dieth, his Executors shall have the Corn, for that his estate was uncertain, and determined by the act of God. And the same Law is of the Lessee for years of Tenant for life. So if a man be seised of land in the right of his wife, and soweth the ground, and he dieth, his Executors shall have the Corn, and if his wife dye before him he shall have the Corn. But if the husband and wife be joyntenants of the land, and the husband soweth the ground, and the land surviveth to the wife, it is said (a) that she shall have the Corn. If Tenant pur terme dauter vie soweth the ground, and Cestuy que vie dieth, the Lessee shall have the Corn. If a man seised of lands in fee hath issue a daughter and dieth, his wife being enseint with a son, the daughter soweth the ground, the son is born, yet the daughter shall (b) have the Corn, because her estate was lawfull, and defeated by the act of God, and it is good for the Common-wealth that the ground be sown. (c) But if the Lessee at will sow the ground with Corn, &c. and after he himself determine his will, and refuseth to occupy the ground, in that case the Lessor shall have the Corn because he loseth his rent. And if a woman that holdeth land Durante viduitate sua soweth the ground and taketh husband (d) the Lessor shall have the emblements, because that the determination of her own estate grew by her own act. But where the estate of the Lessee being incertain is defeasible by a right Paramount, or if the Lease determine by the act of the Lessee as by forfeiture, condition, &c. (e) There he that hath the right Paramount, or that entreth for any forfeiture, &c. shall have the Corn.

If a Disseisor sow the ground and sever the Corn, and the Disseisee re-enter (f) he shall have the Corn because he entreth by a former Title, and severance or removing of the Corn altereth not the case, for the regress is a continuation of the Freehold in him in judgment of Law from the beginning.

(g) If Tenant by statute Merchant soweth the ground, and then a sudden and casual profit falleth by which he is satisfied, he shall have the emblements.

¶ *Le Lessor luy puit ouster.* There is an express ouster, and implyed ouster: an express, as when the Lessor cometh upon the land, and expressly forewarneth the Lessee to occupy the ground no longer; an implyed, as if the Lessor without the consent of the Lessee enter into the land and cut down a tree, this is a determination of the will, for that it should otherwise be a wrong in him unless the Trees were excepted, and then it is no determination of the will, for then the act is lawfull albeit the will doth continue. If a man leaseth a Mannor at will whereunto a Common is appendant, if the Lessor put in his beasts to use the Common, this is a determination of the will. The Lessor may by actual entry into the ground determine his will in the absence of the Lessee, but by words spoken from the ground the will is not determined untill the Lessee hath notice. No more than the discharge of a Factor, Attorney or such like in their absence is sufficient in law untill they have notice thereof.

(a) If a woman make a lease at will reserving a rent and she taketh husband, this is no countermand of the lease at will, but the husband and wife shall have an action of debt for the Rent, and so it is if a lease be made to a woman at will reserving a Rent, and the Lessee taketh husband, this is no countermand of the lease, but the Lessor may have an action of debt or distrein them for the Rent: so if the husband and wife make a lease at will of the wifes land reserving a Rent, and the husband dye, yet the lease continueth: In the like manner, if a lease be made by two to two others at will, and one of the lessors or of the lessees dy, the lease at will is not determined in neither of those cases which are necessary points to be known.

¶ *Apres lembleer, & devant que les blees sont matures.* Then put the case that the Corn is ripe and ready to be cut down, and the Lessor before the Lessee reapeth it, enter, and put out the lessee, whether shall the lessee have the Corn? and it is without all question that the lesser shall have it, for by the same reason that he shall have it when he is put out before it

abera les blées, pur ceo que le termor conust le certaintie de ſ terme quant ſ time serroit finy.

have the corn, because the Lessee knew the certainty of his Term and when it would end.

18 E. 4.18.
Temps E.1. Br.25.
10 Ass. pl.6.
10 E.3.29.
46 E.3.1.
7 H.4.17.
7 Ass.19.
Lib.5.10. Olands case.

(a) 8 Ass.21.
8 E.3.54.
Dyer 316.

(b) 16 H.6.6.

(c) Lib.5. fol.106. Olands case.

(d) Olands case ubi supra.

(e) 33 E.3. tresp. 254.
42 E.3.25.
Olands case ubi supra.
(f) 27 H.6.1. 37 H.6.6.
12 E.4.45. 14 E.4.6.
15 E.4.31. 2 H.7.1.
5 H.7.17. 12 H.7.25.
10 H.4.1. 28 H.8.32. Dyer.
(g) 44 E.3.15.
Fleta lib.3. cap.15.
(h) 35 H.6.24. 21.H.6.9.
15E 4.3. 21 E.4.35.
Pl.Com. Parson de Honylands case.

14 E.4.6.
8 E.4.11, &c.

(a) Lib.5. fol.10. Hensteads case.
10 Eliz. Dyer 269.b.

it be ripe, he ſhall have it when he is put out when it is ripe. Et ubi eadem eſt ratio, ibi idem Jus.

¶ *Et auxi franke entrie, egres et regres.* (b) For when the Law doth give any thing to one, it giveth impliedly whatſoever is neceſſary, for the taking and enjoying of the ſame. Quando Lex aliquid alicui concedit, concedere videtur & id, ſine quo res ipſa eſſe non poteſt; and the Law in this caſe giveth him not to an action for the corn, but giveth him a ſpeedy remedy to enter into the Land, and to take and carry it away, and compelleth not him to take it at one time, or to carry it before it be ready to be carried; and therefore the Law giveth all that which is convenient, viz. free entry, egreſs and regreſs as much as is neceſſary.

(b) Temps E.1. tit. grant. 4. 9 E.4.35. 5 E.3. treſp. 13. 21 H.7.14.b. 8 H.6.18.b. 2 R. 2. barre 237. 14 H.8.2. 27 H.8.18.b.

If the Leſſee be diſturbed of this way which the Law doth give unto him, he ſhall have his action upon his caſe and recover his damages, and this action the Law doth give unto him, for whenſoever the Law giveth any thing, it giveth alſo a remedy for the ſame. But here is to be obſerved a diverſity between a private way, whereof Littleton here ſpeaketh, and a common way. For if the way be a common way, if any man be diſturbed to go that way, or if a ditch be made overthwart the way ſo as he cannot go, yet ſhall he not have an action upon his caſe, and this the Law provided for avoiding the multiplicity of Suits. for if any one man might have an action, all men might have the like. But the Law for this common nuſance hath provided an apt remedy, and that is by preſentment in the Leet or in the Torn, unleſs any man hath a particular damage, as if he and his horſe fall into a ditch, whereby he received hurt and loſs, there for this ſpecial damage which is not common to others, he ſhall have an action upon his caſe, and all this (c) was reſolved by the Court in the Kings Bench. And in that caſe it was ſaid that it had been adjudged in that Court between Weſtbury and Powel, that where the Inhabitants of Southwark had by cuſtome a watering place for their cattel which was ſtopped up by Powel, that in that caſe any Inhabitants of Southwark might have an action, for otherwiſe they ſhould be without remedy, becauſe ſuch a nuſans is not preſentable in the Leet or Torn: Note the diverſity.

(c) 27 H.8.27. 2 E.4.9. 5 E.4.2. Tr. 41 Eliz. between Finleux and Hovenden, Vid. lib.5. fol.72. Williams Caſe.

There be three kind of ways, whereof you ſhall (d) read in our ancient Books. Firſt, a Foot-way, which is called Iter, quod eſt jus eundi vel ambulandi hominis, and this was the firſt way.

(d) Fleta lib.4. ca. 27. Bracton lib.4. fol.232.

The ſecond is a Foot-way and Horſe-way, which is called actus, ab agendo: and this vulgarly is called pack and prime way, becauſe it is both a Foot-way, which was the firſt or prime way, and a pack or drift way alſo.

The third is via or aditus, which contein the other two, and alſo a cart-way, &c. for this is jus eundi, vehendi & vehiculum & jumentum ducendi: and this is twofold, viz. Regia via, the Kings high way for all men, & communis ſtrata, belonging to a City or Town, or between neighbours and neighbours. This is called in our Books Chimin, being a French word for a Way, whereof cometh Chiminage, Chiminagium, or Chimmagium, which ſignifieth a Toll due by cuſtome, for having a way thorough a Forreſt; and in ancient Records it is ſometime alſo called Pedagium.

32 E.3. barre 291. 27 E. 3. 78. 6 E. 3. 23. Charta de foreſta, cap. 14.

If the Leſſe at will by good husbandry and induſtry, either by overflowing, or trenching, or compaſſing of the Meadows, or digging up of Bushes or ſuch like, make the graſs to grow in more abundance, yet if the Leſſor put him out, the Leſſe ſhall not have the graſs, becauſe that the graſs is the natural profit of the earth. And the ſame Law is, if he doth ſow hay-ſeed, and thereby encreaſeth the graſs.

¶ *Auterment eſt ſi tenant pur terme dans que conuſt le fine de ſon terme*, &c. Well ſaid Littleton (which knoweth the end of his term) that is, where the end of the term is certain, but where the Leaſe for years depends upon an incertainty, as upon the death of Tenant for life being made by him, or of a husband ſeiſed in the right of his Wife, or the like, there it is otherwiſe.

Sect. 69.

¶ Item ſi un meſe ſoit leſſe a un home a tener a volunt per force de quel le Leſſee enter en le meſe, deins quel meſe

ALſo if a Houſe be letten to one to hold at will, by force whereof the Leſſee entreth into the houſe, & brings his houſhold-

¶ *Si un meſe ſoit leſſe a un home a tener a volunt*, &c. The reaſon of this is evident upon that which hath been ſaid before.

¶ *Meſe*, or Maiſon

ſon called in Legall Latine Meſſuagium, containeth (as hath been ſaid) the Buildings, Curtelage, Orchard, and Garden.

Cottage, Cottagium is a little Houſe without Land to it. (a) And 31 Eliz. cap. 1. and Cottagers in Doomeſday Book are called Cotterelli: and in ancient Records Haga ſignifieth a houſe. If a man hath a houſe near to my houſe, and he ſuffereth his houſe to be ſo ruinous, as it is like to fall upon my houſe, (b) I may have a Writ De domo reparanda, and compell him to repair his houſe. But a Præcipe lieth not de domo, but de meſſuagio.

(a) 31 El. ca.1. in Doomeſday.

(b) Reg.153 F.N.B. 127. 4 E.2. Vouch.244. Six Acres of Land may be parcel of a Houſe.

¶ *Per reaſonable temps.* (c) This reaſonable time ſhall be adjudged by the diſcretion of the Juſtices, before whom the cauſe dependeth: and ſo it is of reaſonable fines, cuſtoms, and ſervices upon the true ſtate of the caſe depending before them: for reaſonableneſs in theſe caſes belongeth to the knowledge of the Law, and therefore to be decided by the Juſtices.

(c) 22 E.4.27. 34 H.6.40.

il porta les utenſils de meaſon, puis le Leſſor luy ouſta, uncore il avera franke entre, egreſſe & regreſſe en meſme le meſe per reaſonable temps, de carrier ſes biens & utenſils. Sicome home ſeiſie dun meſe en Fee ſimple, Fee Taile, ou pur terme de vie, le quel ad certaine biens deins un le meſe, & fait ſes executs, & dey, quecunque apres ſa mort ad l' meſe, uncore les executors avont franke entry, egreſſe & regreſs d' carier hors de meſme le meſe les biens lour teſtator per reaſonable temps.

ſtuffe into the ſame, and after the Leſſor puts him out, yet he ſhall have free entry, egreſſe and regreſſe into the ſaid houſe, by reaſonable time to take away his Goods and Utenſils. As if a man ſeiſed of a Meſe in Fee ſimple, Fee Tail, or for life, hath certain Goods within the ſaid Houſe, and makes his Executors, and dieth, whoſoever after his deceaſe hath the Houſe, his Executors ſhall have free entry, egreſs and regreſs to carry out of the ſame Houſe the Goods of their Teſtator by reaſonable time.

(e) Bract. li.2.ca.32.b. And this being ſaid of time, the like may be ſaid of things incertain, which ought to be reaſonable; for nothing that is contrary to reaſon, is conſonant to Law.

(e) 2 H.6.15. 21 H.6.30. (e) *Si come home ſeiſi dun meſe en Fee ſimple, ou Fee taile, &c.* This is ſo evident as it needeth no explanation.

Sect. 70.

¶ HEre it appeareth, That if the Feoffee doth enter, he is Tenant at Will, becauſe he entreth by the conſent of the Feoffor.

¶ *Et deliver a luy le fait.* Albeit the Deed be delivered upon the ground, yet doth it not amount to a livery of Seiſin of the Land; for it hath his natural effect to make it a Deed. (f) Donationum alia perfecta, alia incerta & non perfecta, Ut

(f) Plet.lib.3. ca.3.& ca.15. 43 E.3. tit.feof. & faits 51. 35 H.8 Feof. Br. 27 Aſſ.61. 31 Aſſ.2. 39 Aſſ. 12. 41 E.3.17. lib.6. fo.26. Sharp's Caſe.

¶ ITem ſi un home fait un fait de Feoffment a un auter de certaine terre, & delſver a luy le fait, mes nemy liverie de Seiſin, en ceo caſe, celuy a que le fait eſt fait, poit enter en le Terre, & tener & occupier a la volunt celuy que fiſt

ALſo if a man make a Deed of Feoffment to another, of certain Lands, and delivereth to him the Deed, but not Livery of Seiſin; in this caſe he to whom the Deed is made, may enter into the Land, and hold and occupy it at the will of him which

le

le fait, pur ceo que il eſt prouve per les parols del fait, que il eſt la volunt que le auter avera la terre, mes celuy que fiſt le fayt luy poet ouſte quant luy pleiſt.

made the Deed, becauſe it is proved by the words of the Deed that it is his will that the other ſhould have the Land; but he which made the Deed, may put him out when it pleaſeth him.

si donatio lecta fuerit & conceſſa, ac traditio nondum fuerit ſubſecuta. But if the Deed be delivered in name of Seiſin of the Land, or if the Feoffor ſaith to the Feoffee, Take and enjoy this Land, according to the Deed, or enter into this Land, and God give you joy: theſe words do amount to a livery of Seiſin.

Sect. 71.

¶ ITem ſi un meſe ſoit leſſe a tener a volunt, le leſſee neſt pas tenus a ſuſtainer ou repairer le Meaſon ſi come Tenant a terme dans eſt tenus. Mes ſi le Leſſee a volunt fait voluntarie waſt, ſicome en abatement des meaſons, ou en couper des arbres, il eſt dit que le Leſſor avera de ceo enus luy action de treſpaſſe. Sicome jeo bayle a un home mes barbits a compeſter ſ tt, ou mes boefes a arer la terr, & il occiſt mes avers, jeo puiſſoy bn an un act d treſs enus luy nient obſtant l' bailement.

ALſo if a Houſe be leaſed to hold at will, the Leſſee is not bound to ſuſtain or repair the Houſe, as Tenant for term of years is tied. But if Tenant at will commit voluntary waſte, as in pulling down of Houſes, or in felling of Trees, it is ſaid that the Leſſor ſhall have an Action of Treſpaſſe for this, againſt the Leſſee. As if I lend to one my Sheep to tathe his Land, or my Oxen to plow the Land, and he killeth my Cattel, I may well have an Action of Treſpaſſe againſt him, notwithſtanding the lending.

¶ *Si un meſe ſoit leſſe a tener a volunt le leſſee neſt pas tenus*, &c. For the Statute of Glouceſter above mentioned extends not to a Tenant at will, and therefore for permiſſive waſte, the Leſſor hath no remedy at all.

¶ *Mes ſi Leſſee a volunt fait voluntary waſt*, &c. (g) And true it is, that if Tenant at will cutteth down Timber trees, or voluntarily pull down and proſtrate houſes, the Leſſor ſhall have an action of Treſpaſs againſt him, quare vi & armis; for the taking upon him power to cut Timber, or proſtrate Houſes, concerneth ſo much the Freehold and Inheritance as it doth amount in Law to a determination of his will, (h) and ſo hath it been adjudged.

(i) If Tenant at will granteth over his Eſtate to another, and the Grantee entreth, he is a Diſſeiſor, and the Leſſor may have an action of Treſpaſs againſt the Grantee, for albeit the Grant was void, yet it amounteth to a determination of his will.

(g) 21 H.6.38. 28 E.3.25. 12 H.4.3. 22 E.4.30.

(h) Mich. 28 & 29 Eliz. Rot. 318. in Com. Banc. inter Walgrave & Somerſet. Vid. le Count de Shrewsburies caſe, L.5. fo. 13.

(i) 27 H.6.3. 22 E.4.5.

¶ *Si come jeo baile a un home mes barbits a compeſter ſon terre*, &c. And the reaſon is, (k) that when the Bailee having but a bare uſe of them, taketh upon him as an owner, to kill them, he loſeth the benefit of the uſe of them. Or in theſe caſes he may have an action of Treſpaſſe ſur le caſe for this converſion, at his election.

(k) V.12 H.4. 24.1 E.4.3.b. 12 E.4.8. 21 E.4.19.& 76. 22 E.4.5. 3 H.7.4. 21 H.7.14. Flet. li. 2. ca. 1.

¶ *Treſpaſſe*. Tranſgreſſio derivatur à tranſgrediendo, becauſe it paſſeth that which is right: Tranſgreſſio autem eſt cum modus non ſervatur, nec menſura: debet enim quilibet in ſuo facto modum habere, & menſuram: Nota, In the loweſt, and higheſt offences there are no acceſſaries, but all are principals, as in Riots, Routs, forcible Entries, and other tranſgreſ-

sions vi & armis, which are the lowest offences; and so in the highest offence which is Crimen læsæ Majestatis, there be no accessaries, but in Felonies there be accessaries both before and after.

Sect. 72.

21 H.7.39.b. 2 E.4.6.b. 7 E.1.27. 2. 6 R.2. Avowrie 86.

¶ *IL poit distreyner pur le rent arere ou aver de ceo un action de debt. &c.* But if he impound the distresse upon the ground letten at Will, the Will is determined, Note, he may distrein for the Rent, & yet it is no rent serdice. for no fealty belongeth thereunto, but a Rent distreinable of common right.

¶ Nota si le Lessor sur tiel Lease a volunt reserve a luy un annuall Rent, il poit distrainer pur le Rent arere, ou aver de ceo un action d debt a son election.

Note, if the Lessor upon a Lease at Will, reserve to him a yearly Rent, he may distreine for the Rent behind, or have for this an Action of Debt at his own election.

(l) Bracton lib.4. f.318. 4 E.3.39. 7 E.3.13. 24 E.3.24. 38 E.3.28. 7 R.2. favour def. 30. 8 E.4.25. 4 H.6.30. 22 E.4.38. 18 E.4.25. F.N.B.201. D. 203. 8 E.2. Entre 87. Temps H.8. b.15. tit. Tenant a volunt. Pl. Com. 138. 4 H. 7. 3. (m) 13 H.7.10.2. 21 H.6.54. 5 E.4.3. 22 R.2. it. Discont. 48 E.3.23. Pl.Com.435. 19 E.3. bre. 468. 15 E.4. Discont.30. 6 E.3.56.57. 21 E.4.5. 21 H.7.38. 10 E.4.18. Per Choke & Litt. (n) Statute de Merlbridge. cap. 26. Abb. Act. 120 b. F.N.B. 196. 11 E.4.10, & 11. Bract.lib.4. fol.252,253.

There is a great diversity between a Tenant at Will, and a Tenant at sufferance, for Tenant at Will is always by right, & Tenant at Sufferance entreth by a lawful Lease, and holdeth over by wrong; a Tenant at sufferance is he that at the first came in by lawful demise; and after his Estate ended continueth the possession, and wrongfully holdeth over. (l) As Tenant pur terme dauter vie; continueth in possession after the decease of Ce'que vie, or Tenant for years holdeth over his term, the Lessor cannot have an action of trespas before Entry. Now that a Writ of Entry ad terminum qui præteriit lieth against such a Tenant as holdeth over, is rather by admission of the Demandant, than for any estate of Freehold that is in him, for in judgment of Law he hath but a bare possession, but against the King there is no Tenant at sufferance, but he that holdeth over in the cases abodesaid is an intruder upon the King, because there is no laches imputed to the King for not entring. (m) If Tenant in Tail of a Rent grant the same in fee and dieth, yet the issue in tail may bring a Formedon, and admit himself out of possession. The like Law is if a man maketh a Lease at will and dieth, now is the will determined; and if the Lessee continueth in possession, he is Tenant at sufferance, and yet the heir by admission may have an assise of Mordanc' against him. (n) But there is a diversity between particular Estates made by the Terretenant, as above is said, and particular Estates created by act in Law: as if a Gardian after the full age of the heir, continueth in possession. he is no Tenant at sufferance, but an Abator, against whom an Assise of Mordancestor doth ly. Et sic de similibus.

Chap. 9. *Sect.* 73.

Tenant by Copy.

¶ *Tenant per copie, &c.* Tenens per Copiam Rot. Cur'. Copie we call in Latine, Copiam, though Copia in his proper signification signifieth plenty, but we have made a Latine word of the French word Copie, and this is ancient; for in the Register fol. 51. there is a Writ de Copia libelli deliberanda, which is grounded upon the Statute of 2 H.4 cap. There is no Tenant in the Law,

¶ Tenant p Copie de court rol' est, deins quel manor il y ad un custome que ad este use de temps dont memorie ne Court, que certain tenants deins mesm le Manor, ont use daver terres & tenements, a

¶ Tenant by Copy of Court Roll is, as if a man be seised of a manor, within which manor there is a custom, which hath been used time out of mind of man, that certain Tenants within the same manor have used to have Lands and Tetener

tener a eux & la lour heires en Fée ſimple, ou en Fée taile, ou a terme de vie, &c. a volunt le Seignior ſolonque le cuſtome de meſme le Manor.

nements to hold to them and their heires in Fee ſimple, or Fee taile; or for terme of life, &c. at the will of the Lord according to the cuſtom of the ſame Manor.

that holdeth by Copy but only this kind of cuſtomary tenant for no man holdeth by Copy of a Charter, or by copy of a fine, or ſuch like, but this Tenant holdeth by copy of Court Roll.

(a) Bracton calleth Copyholders Villanos Sockmannos, not becauſe they were bond, but becauſe they held by baſe tenure by doing of Villein Services.

(d) Bracton lib.2. cap.8. fol.26, & lib 4. fol.209. Britton 165. Fleta lib.1. cap.8, & lib.2. cap.6. Item de cuſtumariis Ockam Cap. quid murdrum F.N.B. fol. 12. c.

And Britton ſaith, that ſome that be free of bloud do hold Land in Villeinage, and Littleton himſelf in the next Chapter calleth them Tenants by baſe Tenure: and in F.N.B. fol. 12. C. Et ceſt terme que eſt ore a ceſt jour appel copitenaunts ou copiholders, ou tenaunts per copie, eſt forſque un novel noſme trover, car dancient temps il fuer' appelles tenants in villenage, ou de baſe tenure, &c.

(b) And yet in 1 H. 5. 11. they be called Copyholders: in 14 H. 4. 34. Tenant per le verge, in 42 E. 3. 25. Tenant per Roll ſolonque le volunt le Seignior; and in the Statute of 4 E. 1. called Extenta manerii, they are called cuſtumarii tenentes, and ſo doth Fleta call them; And before him Ockam (who wrote in the reign of H. 2.) ſpake of them, and how, and upon what occaſion they had their beginning.

(b) 1 H.5.11. 14 H.4.34. 42 E. 3.25. Vid. lib.4. fol.2. Browne's Caſe.

(c) Terra ex ſcripto Saxonice Bockland, fundum veteres aut ex ſcripto qui Bockland. i. Bookland, aut ſine ſcripto qui Folkland dicebatur, poſſidebant; quæ fuit ex ſcripto poſſeſſio commodiore erat poſſeſſione libera, atque immunis, fundus ſine ſcripto cenſum penſitabat annuum, atque officiorum ſervitute quadam eſt obligatus; priorum viri plerunque nobiles, atque ingenui, poſteriorum ruſtici fere & pagani poſſidebant.

(c) Lamb. verb. terra ex ſcripto.

¶ *Court.* Curia, Court, is a place where Juſtice is judicially miniſtred, and is derived à Cura, quia in curiis publicis curas gerebant. (d) The Court Baron muſt be holden on ſome part of that which is within the Manor, for if it be holden out of the Manor it is void, unleſs a Lord being ſeiſed of two or three Manors, hath uſually time out of mind kept at one of his Manors Courts for all the ſaid Manors, then by cuſtome ſuch Courts are ſufficient in Law, albeit they be not holden within the ſeveral Manors. And it is to be underſtood, that this Court is of two natures, the firſt is by the Common Law, and is called a Court Baron, as ſome have ſaid, for that it is the Freeholders or Freemans Court, (for Barons in one ſenſe ſignifie Freemen) and of that Court the Freeholders being ſuitors be Judges, and this may be kept from three weeks to three weeks; The ſecond is a Cuſtomary Court, and that doth concern Copyholders, and therein the Lord or his Steward is the Judge. Now as there can be no Court Baron without Freeholders, ſo there cannot be this kind of cuſtomary Court without Copyholders or Cuſtomary holders. And as there may be a Court Baron of Freeholders only without Copyholders, and then is the Steward the Regiſter, ſo there may be a cuſtomary Court of Copyholders only without Freeholders, and then is the Lord or his Steward the Judge. And when the Court Baron is of this double nature, the Court Roll containeth as well matters appertaining to the Cuſtomary Court, as to the Court Baron.

(d) Vid.4. fol.24. inter Murrel & Smith eodem. lib. fol.97. inter Oliſon & Molineux. Lib.4. fol.26. Melwitches Caſe, Britton fol.274.

And for as much as the title, or eſtate of the Copyholder is entred into the Roll, whereof the Steward delivereth him a copy, thereof he is called a Copyholder. (e) It is called a Court Baron, because amongſt the Laws of King Edw. the Confeſſor, it is ſaid: Barones vero qui ſuam habent curiam de ſuis hominibus, &c. taking his name of the Baron who was Lord of the Manor, or for that properly in the eye of the Law it hath relation to the Freeholders (f) who are Judges of the Court. And in ancient Charters and Records the Barons of London and Barons of the Cinque Ports do ſignifie the Freemen of London, and of the Cinque Ports.

(e) Lamb. fol.128, & 136. Cambden Brit. fol.121.b. Britton fol. 274.

(f) Mirrour cap.1. ſect.3.

¶ *Seiſin dun Mannor.* Manerium dicitur à manendo ſecundum excellentiam, ſedes magna, fixa & ſtabilis. Lageman. i. habens ſocam & ſacam ſuper homines ſuos, &c. (g) Et ſciendum eſt quod manerium poterit eſſe per ſe ex pluribus ædificiis coadjuvatum ſive villis, & hamlettis adjacentibus. Poterit etiam eſſe manerium & per ſe & cum pluribus villis, & cum pluribus hamlettis adjacentibus, quorum nullum dici poterit manerium per ſe, ſed villæ ſeu hamlettæ; poterit etiam eſſe per ſe manerium capitale, & plura continere ſub ſe maneria non capitalia, & plures villas & plures hamlettas quaſi ſub uno capite aut dominio uno. And afterwards, Manerium autem fieri poterit ex pluribus villis vel una, plures enim villæ poſſunt eſſe in corpore manerii ſicut & una. And in theſe (h) ancient Authors you ſhall ſee the difference, inter manſionem, villam, & manerium. Concerning the inſtitution of this Court by the Lawes and Ordinances of ancient Kings, and eſpecially of King Alfred, it appeareth that the firſt Kings of this Realm had

Doomesday.

(g) Bract. lib.4. fol.212. Fleta lib.4. cap.15, & lib.6. cap. 49. Britton fol. 124.

(h) Bracton lib.5.434. Fleta ubi ſupra. Mirrour cap.1. ſect.3.

had all the Lands of England in Demean, & les grand Manors & Royalty they reſerved to themſelves, and of the remuant they, for the defence of the Realm, infeoffed the Barons of the Realm with ſuch juriſdiction as the Court Baron now hath, and inſtituted the Freholders to be Judges of the Court Baron. And herewith agreed the aforeſaid Law of Saint Edward. And it is to be obſerved, that in thoſe ancient Laws, under the name of Barons were compriſed all the Nobility.

There may be a cuſtomary Manor granted by Copy of Court Roll, ſo although the word be (ſeiſie) which properly betokeneth a Freehold yet Tenant for years, Tenant by Statute Merchant, Staple, Elegit, and Tenant at Will, Gardian in Chivalry, &c. who are not properly ſeiſed, but poſſeſſed, are Domini pro tempore, not only to make admittance, but to grant voluntary copies of ancient copyhold Lands which come into their hands. And therefore there is a diverſity between Diſſeiſors, Abators, Intruders, and others that have defeaſible titles: for their voluntary grants of ancient copyhold Lands, ſhall not bind the Diſſeiſees or others that right have. And voluntary grants by Copy, made by ſuch particular Tenants as is aforeſaid, ſhall bind him that hath the Freehold and Inheritance, becauſe all theſe be lawful Lords for the time being; but ſo is not a Tenant at ſufferance, becauſe he is in by wrong, as hath been ſaid, and ſo (i) was it adjudged, P. 29 Eliz. inter Rowſe & Arteis, lib. 4. fol. 24. But admittances made by Diſſeiſors, Abators, Intruders, Tenant at ſufferance, or others that have defeaſible Titles, ſtand good againſt them that have right, becauſe it was a lawful Act, and they were compellable to do them.

(i) Lib. 4. fol. 24. p. 29 El. 2. inter Rows & Arteis.

(k) Dier Mich. 7, & 8. Eliz. Manuſcript.

(k) And yet in ſome ſpecial caſe an Eſtate may be granted by copy, by one that is not Dominus pro tempore, nor that hath any thing in the Manor. As if the Lord of a Manor by his Will in writing, deviſeth that his Executor ſhall grant the cuſtomary Tenements of the Manor, according to the cuſtom of the Manor for the payment of his debts and dieth, the Executor having nothing in the Manor, may make Grants according to the cuſtom of the Manor.

¶ *Deins quel mannor il y ad un Cuſtome que ad eſte uſe de temps dont memory ne Court, &c.* Of this cuſtom here ſpoken of, there be three ſuppoſers. The firſt is time, and that muſt be out of memory of man, which is included within this word (Cuſtom) ſo as Copyhold cannot begin at this day. (l) The ſecond ſuppoſer is, that the Tenements be parcell of the Manor, or within the Manor, which appear by theſe words of Littleton, Que certaine tenants deins meſme le mannor, &c. The third ſuppoſer is, that it hath been demiſed and demiſible by Copy of Court Roll, for it need not be demiſed time out of mind by Copy of Court; but if it be demiſible, it is ſufficient. For example: If a copyhold Tenement eſcheat to the Lord, and the Lord keepeth it in his hands by many years; during this time, it is not demiſed, but demiſible, for the Lord hath power to demiſe it again.

(l) Vide lib. 4. fol. 24. inter Murrel and Smith.

¶ *A volunt le Seignior ſolonque le cuſtome.* So as he is not a bare Tenant at Will, but a Tenant at Will according to the cuſtome of the Manor, as ſhall be ſpoken more hereafter in this Chapter.

¶ *Certaine tenements.* What things may be granted by Copy, is neceſſary to be known: Firſt, a Manor may be granted by Copy. Secondly, Underwoods without the ſoil may be granted by Copy to one and to his heirs, and ſo may the herbage or veſture of Land. Thirdly, generally all Lands and Tenements within the Manor, and whatſoever concerneth Lands or Tenements may be granted by Copy: as a Fair appendant to a Manor may be granted by Copy, &c.

Lib. 11. 17. Sir H. Nevils. Caſe. Lib. 4. fo. 30. 31 inter Hoe & Taylor.

¶ *Conſuetudines.* This word Conſuetudo being deriued à conſueto, properly ſignifieth a Cuſtom, as here Littleton taketh it: but in legall underſtanding it ſignifieth alſo Tolles, Murage, Pontage, Paviage, and ſuch like newly granted by the King; and therefore when the King grants ſuch things, the words be, Conceſſimus, &c. in auxilium villæ prædict' paviand' &c. conſuetudines ſubſcriptas, viz. de quolibet ſunnagio, &c,

Repiſt. F.N.B. 270.d. Vid. Magn. Carta in cap. Itin. fol. 151. Brack. li. 3. 117. Fleta lib. 1. cap. 20.

And it was an Article of the Juſtices in Eire to inquire, De novis conſuetudinibus levatis in regno, ſive in terra, ſive in aqua, & quis eas levavit & ubi. Where conſuetudo is taken for Tolles and ſuch like Taxes or charges upon the Subject.

Sect. 74.

¶ *Et tiel Tenant ne puit aliener ſa terre, &c.* And this is

¶ Et tiel Tenant ne puit alien ſa terre per fait, car

AND ſuch a Tenant may not alien his Land by deed, for then

Don-

donques le Seignior poit entre come en chole forfeit a luy, mes sil voit alien sa terre a un auter, il covient solonque alcun custome de surrender les tenements en alcun Court, &c. en le maine le Seignior, al use celuy que avera le state, en tiel form, ou a tiel effect.

Ad hanc Curiam venit *A.* de *B.* & sursum-reddidit in eadem Curia, unum mesuagium, &c. in manus Domini, ad usum *C.* de *D.* & hæredum suorum, vel Hæredum de corpore suo exeuntium vel pro termino vitæ suæ, &c. Et super hoc venit prædictus *C.* de *D.* & cepit de Domino in eadem Curia, mesuagium prædictum, &c. Habendum & tenendum sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ, &c. ad voluntatem domini, secundum consuetudinem manerii, faciendo & reddendo inde redditus, servitia, & consuetudines inde, prius debita & consueta, &c. Et dat Domino pro fine, &c. Et fecit Domino fidelitatem, &c.

the Lord may enter as into a thing forfeited unto him. But if he will alien his Land to another; it behoveth him after the custome to surrender the Tenements in Court, &c. into the hands of the Lord, to the use of him that shall have the Estate in this form, or to this effect.

A. of *B.* cometh unto this Court, and surrendreth in the same Court a Mease, &c. into the hands of the Lord, to the use of *C.* of *D.* and his heirs, or the heires issuing of his body, or for term of life, &c. And upon that, cometh the aforesaid *C.* of *D.* and taketh of the Lord in the same Court, the foresaid Mease, &c. To have and to hold to him and to his heirs, or to him and to his heires issuing of his body, or to him for term of life, at the Lords will, after the custome of the Manor, to do and yield therefore the Rents, Services, and Customes thereof before due and accustomed, &c. and giveth the Lord for a Fine, &c. and maketh unto the Lord his fealty, &c.

true in case of alienation: but when a man hath but a right to a Copyhold, he may release it by Deed or by Copy, to one that is admitted Tenant de facto. Lib. intrat. 131. Lib. 4. fol. 25. b. inter Kite & Queinton.

¶ *Alien per fait.* Here it appeareth by Littleton that there must be an alienation: for the making of the deed alone, unless somewhat pass thereby, is no forfeiture: as if he make a Charter of feoffment, or a Deed of demise for life, and make no Livery, this is no forfeiture, because nothing passeth; and therefore no alienation, but otherwise it is of a lease for years.

¶ *Forfeit a luy.* This Adjective in Latine is forisfactus, the Verb is forisfacere, and the Nown forisfacturi; they are all derived of foris (that is) extra, and facere, quasi dicerct, extra legem seu consuetudinem facere, to do a thing against or without Law or Custome, and that legally is called a Forfeiture. Littleton useth this word but once in all his Book. What shall be said (k) forfeitures of Copyholds, you may read at large in my Reports. (k) Lib. 4. inter les Copyhold cases, 21, 23, 25, 27, 28. Lib. 8. 99. 99, 100. Lib. 9. 75, 107. Lib. 10. 132.

¶ *En ascun Court.* (l) This is the general custome of the Realm, that every Copyholder may surrender in Court, and need not to alleadge any custom therefore. So if out of Court he surrender to the Lord himself, he need not alleadge in pleading any custome, but if he surrender out of Court into the hands of the Lord by the hands of two or three, &c. Copyholders, or by the hands of the Baylif or Reeve, &c. or out of Court by the hand of any other; these Customs are particular, and therefore he must plead them. (l) Bract. lib. 2. cap. 8. & lib. 4. 49. 15 H. 4. 34. 1 H. 5. 11.

(m) Bracton, lib. 4. fol. 209. speaking of these kind of customary Tenants, saith, Date autem non possunt tenementa sua, nec ex causa donationis ad alios transferre, non magis quam villani puri, & unde si transferre debeant, restituunt ea Domino vel Ballivo, & ipsi ea tradant (m) Bract. lib. 4. fo. 209. & lib. 2. cap. 8. ac. 14 H. 4. 34.

tradant aliis in villenagium tenendã, but although it be incident to the Eſtate of a Copyhold, to paſs as our Author ſaith by ſurrenders; (b) yet ſo forcible is cuſtom, that by it a Freehold and Inheritance, may alſo paſs by ſurrender (without the leave of the Lord) in his Court, and deliuered over by the Baily to the Feoffee, according to the forme of the Deed, to be enrolled in the Court, or the like.

(b) Coram rege Mich. 31 E.3. Ranulph Huntingfeld's Caſe. 3 E.3. Corona 31e. 11 H.4.83. per Therning.

¶ *Ad hanc curiam venit* A de B *& ſurſum-reddidit*, &c. Here Littleton putteth an example of a Surrender in Court, and in this example three (c) things are to be obſerued.

(c) Vide Lib.4. inter les caſes de Copiholds.

Firſt, that the ſurrender to the Lord be general without expreſſing any Eſtate, for that he is but an inſtrument to admit Ceſtuy a que uſe, for no more paſſeth to the Lord, but to ſerue the limitation of the uſe, and Ce' que uſe, when he is admitted, ſhall be in by him that made the Surrender, and not by the Lord.

Secondly, if the limitation of the uſe be general, then Ce' que uſe, taketh but an Eſtate for life; and therefore here Littleton expreſſeth upon the declaration of the uſe, the limitation of the Eſtate, viz. in Fee ſimple, Fee tail, &c.

(d) Mich.2 & 3.Ph.& M. in Com. Banco, by the whole Court in Conſtable's Caſe of Pickenham in Norfolke.

Thirdly, the Lord cannot grant a larger Eſtate than is expreſſed in the limitation of the uſe, Littleton here putteth his caſe of one. If two Joyntenants be of Copyhold Lands in fee, and the one out of Court according to the cuſtom, ſurrender his part to the Lords hands, to the uſe of his laſt Will, and by his Will deviſeth his part to a ſtranger in fee, and dieth, and at the next Court the ſurrender is preſented; by the Surrender and Preſentment the Joynture was ſeuered, and the Deviſee ought to be admitted to the moiety of the Lands, for now by relation the ſtate of the Land was bound by the Surrender.

(e) Fleta lib.2. cap.65, & 71.

¶ *In manus Domini.* Dominus manerii. The Lord of a Manor is deſcribed (e) by Fleta, as he ought to be, in theſe words, In omnibus autem & ſupra omnia decet quemliber Dominum verbis eſſe veracem & in operibus fidelem, Deum & Juſtitiam amantem, fraudem & peccatum odientem, voluntarioſque, malevolos, & injurioſos contemnentem, & apud proximos pietatem vultumque motibilem & plenum: ipſius enim intereſt potius conſilio quam viribus uti, proprioue arbitrio: non cujuſlibet voluntarii juvenis menestralli, vel adulatoris, ſed juriſperitorum virorum fidelium & honeſtorum, & in pluribus expertorum conſilio debet favere. Qui bene ſibi vult diſponere & familiæ ſuæ, ſcire veram executionem terrarum ſuarum neceſſarium erit, ut perinde ſciat quantitatem ſuarum facultatum & finem annuarum expenſarum. And the reſidue is fit for every Lord of a Manor to know and follow, which were too long here to be recited, only his concluſion having ſpoken of the Lords revenue and expences, I will add, Quæ omnia diſtincte ſcribantur in membranis, ut perinde ſagacius vitam ſuam diſponat, & facilius convincat mendacia compoſtatiorum.

(f) See more of this lib.4. the caſes of Copyholds. Trin.1. Jac. Rot. 854. inter Shapland & Ridler in rep'. in Com. Banc. the caſe of the Gardian in Socage adjudged.

(f) If the Lord of the Manor for the time being be leſſee for life or for years; Gardian, or any that hath any particular intereſt, or Tenant at will of a Manor (all which are accounted in Law Domini pro tempore) do take a ſurrender into his hands, and before admittance, the Leſſee for life dieth, or the years, intereſt or cuſtody do end or determine, or the will is determined, though the Lord cometh in above the Leaſe for life or for years, the cuſtody or other particular intereſt or Tenancy at will; yet ſhall he be compelled to make admittance according to the Surrender, and ſo was it holden in 17 Eliz. in the Earl of Arundel's Caſe, which I my ſelf heard.

¶ *Et dat Domino de fine.* For the ſignification of this word (finis) Vide Sect.174, 183, 194, 441.

Of Fines due to the Lord by the Copyholder, ſome be by the exchange or alteration of the Lord, and ſome by the change or alteration of the Tenant: the change of the Lord ought to be by Act of God; otherwiſe no Fine can be due: but by the change of the Tenant, either by the act of God, or by the act of the party, a Fine may be due: for if the Lord do alleadge a cuſtom within his Manor, to have a Fine of every of his Copyholders of the ſaid Manor, at the alteration or change of the Lord of the Manor, be it by alienation, demiſe, death, or otherwiſe; This is a cuſtome againſt the Law, as to the alteration or change of the Lord by the act of the party, for by that means the Copyholders may be oppreſſed by multitudes of Fines, by the act of the Lord. But when the change groweth by the act of God, there the cuſtome is good, as by the death of the Lord: And this, upon a caſe in the Chancery (g) referred to Sir John Popham chief Juſtice, and upon conference with Anderſon, Periam, Walmeſly, and all the Judges of Serjeants Inne in Fleetſtreet was reſolved, and ſo certified into the Chancery. But upon the change or alteration of the Tenant, a Fine is due unto the Lord.

(g) T. 39 Eliz. between the Copyholders of the Manor of Guiltirns in the County of Northumberland and Armeſtrong Lord of the Manor, in Chancery.

Of Fines taken of Copyholders, ſome be certain by cuſtome, and ſome be incertain; but that Fine, though it be incertus, yet it muſt be rationabilis. And that reaſonableneſſe ſhall be diſcuſſed by the Juſtices upon the true circumſtances of the Caſe appearing unto them; and if the Court where the cauſe dependeth, adjudgeth the Fine exacted unreaſonable, then is not the

Copy-

Copyholder compellable to pay it. And ſo was it adjudged: (h) for all exceſſiveneſs is abhorred in Law. See more concerning fines of Copyholders in my Reports, (i) which are ſo plainly there ſet down, as they need not be rehearſed here.

(h) Paſch. 2 Jac. in Com. Banco Rot. 1845. inter Stallon & Brady.
(i) Lib. 4. the caſes of Copyhold.

Sect. 75.

¶ ET tiels tenãts ſont appelles Tenants per Copy de Court Rolle, pur ceo que ils nont auter evidence concernant lour tenements forſque les Copies des Rolles de Court.

And theſe tenants are called tenants by Copy of Court Roll, becauſe they have no other evidence concerning their tenements, but onely the Copies of Court Rolls.

¶ *Ils nont auter evidence.* This is to be underſtood of evidences of alienation, for a releaſe of a right by Deed a Copyholder (that commeth in by way of admittance) may have, and that is ſufficient to extinguiſh the right of the Copyhold which he that maketh the releaſe had.

Sect. 76.

¶ ET tiels tenãts ne emplederõt, ne ſerront impledes de lour tenements p̃ hyeſe le Roy. Mes ſils voilent empleder auters pur lour tenements, ils averont un plaint fait en le Court le Seignior en tiel forme, ou a tiel effect: A. de B. queritur, verſus C. de D. de placito terræ, videlicet, de uno meſuagio, quadraginta acris terræ, quatuor acris prati, &c. cum pertin'. & facit proteſtationem ſequi querelam iſtam in natura brevis domini Regis aſſiſæ mortis anteceſſoris ad communem legem vel brevis Domini Regis aſſiſæ Novæ diſſeiſinæ ad communem legem, aut in natura brevis de For-

And ſuch tenants ſhall neither implead nor be impleaded for their Tenements by the Kings Writ, but if they will implead others for their Tenements, they ſhall have a plaint entred in the Lords Court in this forme, or to this effect A. of B. complains againſt C. of D. of a plea of land, viz. of one meſuage, forty acres of land, four acres of meadow, &c. with the appurtenances, and makes proteſtation to follow this complaint in the nature of the Kings Writ of aſſiſe of Mortdanceſtor at the Common Law, or of an aſſiſe of Novel Diſſeiſin, or Formedon in the deſcender at the

¶ *Tiels tenants ne emplederont, ne ſerront empledes, &c.* This is evident, and needs no explanation.

4 H. 4. 34. adjudged in Parliament.

¶ *Mes ſils voilent empleder autres, ils averont, &c.* Put the caſe that the Demandant in a plaint in nature of a reall action recovereth the land erroneouſly, what remedy for the party grieved? For he cannot have the Kings Writ of falſe judgment in reſpect of the baſeneſſe of the eſtate and tenure, being in the eye of the Law but a Tenant at will; & the Freehold being in another, he ſhall have a petition to the Lord in the nature of a Writ of falſe judgment, and therein aſſigne errors, and have remedy according to the Law.

14 H. 4. 34. 1 H. 5. 11. Vet. N. B. 18. 13 R. 2. tit. Faux judgement, 7 E. 4. 19. 21 E. 4. 80.

¶ *De forma donationis in deſcendere ad communem legem.* By the opinion of Littleton, as there may be an eſtate taile by cuſtome with the co-operation of the Statute of W. 2. cap. 1. ſo may he have a Formedon in deſcender, but as the Stat. without a cuſtome extendeth not to Copyholds, ſo a cuſtome

Lib. 3. fol. 8, 9. in Heydons caſe. Lib. 4. fol. 22, 23. 15 H. 8. Br. tit. taile.

ſtone without the Statute cannot create an eſtate tail. Now it is not a ſufficient proof that lands have been granted in tail; for albeit lands have anciently and uſually been granted by Copy to many men and to the heirs of their bodies, that may be a Fee ſimple conditional as it was at the Common Law. But if a remainder have been limited over ſuch eſtates and enjoyed, or if the iſſues in tail have avoided the alienation of the Anceſtor; or if they have recovered the ſame in Writs of Formedon in the Diſcender, theſe and ſuch like be proofs of an Eſtate tail. (y) But if by cuſtome, Copyhold may be intailed, the ſame by like cuſtome, by Surrender may be cut off, and ſo hath it been adjudged; (z) ſome have holden that there was a Formedon in the Diſcender at the Common Law.

(y) P. 29 Eliz. inter Hill. & Upcheſc. Cuſtome dcins le manor de Overhall in Eſſex 21 Eliz. Dyer 366. 23 Eliz. Dyer 373.
(z) 10 E.2. Formedon 55. 21 E.3.47. Pl. Com.240. 4 E.2. Formedon 50.

ma donationis in deſcendere ad Communem Legem, ou en nature daſcun auter briefe, &c. Plegii de Proſequendo, F. G. &c.

Common Law, or in the nature of any other Writ, &c. Pledges to proſecute F. G. &c.

Sect. 77.

¶ *Car (il eſt dit) que ſi le Seignior, &c.* And here Littleton ſaith truly that it is ſaid ſo, for ſo it is ſaid in 13 E.3.13. R.2. 32 H.6. & 7 E.4.19.

13 E.3. tit. preſcript.20. 13 R.2. feux judgment 7. 32 H.6. tit. Subpœna 2. 7 E.4.19.

But he ſetteth not down his own opinion, but rather to the contrary, as hereafter in this Chapter appeareth. But now Magiſtra rerum Experientia, hath made this clear and without queſtion, that the Lord cannot at his pleaſure put out the lawfull Copyholder without ſome cauſe of forfeiture, and if he do, the Copyholder, may have an action of treſpaſſe againſt him; for albeit he is tenens ad voluntatem Domini, yet it is ſecundum conſuetudinem Manerii.

Vide Sect.81,82.84.132.

(b) And Britton, ſpeaking of theſe kind of Tenants, ſaith thus, Et ceux ſont priviledges en tiel maner que nul de les doit ouſter de

(b) Vid. 42 E.3.25. Brit. fol.165.

¶ Et coment que aſcun tiels Tenants ont inheritance ſolonque le cuſtome del Manor, unt ils nont eſtat forſque a volunt le Seignior ſolonque le courſe del Common Ley. Car il eſt dit, ſi le Seignior eux ouſta, ſils noſit auter remedy forſque de ſuer a lour Seigniors per petition, car ſils averont auter remedy, ils ne ſerront dits Tenants a volunt le Seignior ſolonqz le cuſtome del Manor, mes le Seigino ne voile enfreinder le cuſtome q eſt reaſonable en tiels caſes.

¶ Mes Brian Chief Juſtice dit, que ſon opinion ad touts foits eſte, e unquez ſerra, ſi tiel tenit per le cuſtome payant les ſervices ſoit eject per le Seignior, que il avera action de treſpas vers luy H. 21. Ed.4. Et iſſint fuit lopinion de Danby chief Juſtice, M. 7 Ed. 4.

And although that ſome ſuch Tenants have an inheritance according to the cuſtome of the Manor, yet they have but an eſtate but at the will of the Lord, according to the courſe of the Common law, For it is ſaid, that if the Lord do ouſt them, they have no other remedy but to ſue to their Lords by petition; for if they ſhould have any other remedy, they ſhould not be ſaid to be Tenants at will of the Lord, according to the cuſtome of the Manor. But the Lord cannot break the cuſtome, which is reaſonable in theſe caſes.

¶ But *Brian* Chief Juſtice ſaid, that his opinion hath alwayes been and ever ſhall be, that If ſuch tenant by cuſtome paying his ſervices, be ejected by the Lord, he ſhall have an action of treſpaſſe againſt him. *H.* 21. *Ed.* 4. And ſo was the opinion of *Danby* chief Ju-

Car

Car il dit que le ten̄ per le cuſtome eſt ti-bien inheriter de aver ſon terre ſolonque le cuſtome, come ceſtuy que ad franktenement al Common Ley.

ſtice in 7 Ed. 4. For he ſaith that Tenant by the cuſtome is as well inheritour to have his land according to the cuſtome as he which hath a freehold at the Common Law.

tieles Tenements; tant come ilz ſont les ſervices que alour tenements appendant, ne nul ne poer lour ſervices acreſtre ne change a faire autres ſervices ou pluis. And herewith agreeth Sir Robert Danby, chiefe Juſtice of the Court of Common Pleas, M. 7 E. 4. 19. and Sir Thomas Brian his ſucceſſor, M. 21 E. 4. 80. viz. that the Copyholder doing his cuſtomes and ſervices, if he be put out by his Lord he ſhall have an action of treſpaſs againſt him.

Chap. 10. Sect. 78.

Tenant per le Verge.

¶ Tenants per le Uerge, ſont en tiel nature come tenants per le copy de Court roll. Mes la caſe per q̄ ils ſont appelles tenants per la Uerge, eſt per ceo q̄ quant ils voilent ſurrender lour tenemts en le main lour Seignior al uſe dun auter, ils averont un petite Uerge (per le cuſtom) en lour main, le quel ils bailera al Seneſchall, ou al Bailife ſolonque le cuſtome & uſe del Mannor, & celuy que avera la terre, prendra meſme la terre en le Court, & ſon priſel ſerra enter en le roll, & le Seneſchal, ou le bailife, ſolonq; le cuſtome delivera a ce-

Tenants by the Verge are in the ſame nature as Tenants by copy of Court roll. But the reaſon why they be called tenants by the Verge is, for that when they will ſurrender their Tenements into the hands of their Lord to the uſe of another, they ſhall have a little rod (by the cuſtome) in their hand, the which they ſhall deliver to the Steward, or to the Bayliff according to the cuſtome of the Manor, and he which ſhal have the land ſhall take up the ſame land in Court, and his taking ſhall bee entred upon the roll, and the ſteward or bailiff, according to the cuſtome

¶ *Tenant per le Verge.* This Tenant per le Verge is a meer Copyholder, and taketh his name of the ceremony of the Uerge. Tenure in Villenage, or by baſe Tenure is thus deſcribed by Britton, (a) Villenage eſt teñde demeins de cheſcun Sr̄ baille a tenera ſon volunt per Villeines ſervices de enprover al opes le Seignior, & livere per verge & nient per title de eſtrit, ne per ſucceſſion de heritage dont gards de marriages ne auters ſervices reals come homage & relieſes ne ponent des amnones & demeines ne villenage eſts demand. 14 H. 4. 33.

(a) Britton fol. 165. 6. F. N. B. fol. 12. Liberatio per virgam.

¶ *A le Seneſchal.* (which we call a Steward) Seneſchallus is derived of ſein a houſe or place, and Schalc, an Officer or Governor, ſome ſay that ſen is an ancient word for Juſtice, ſo as Seneſchal ſhould ſignify Officiarius Juſtitiæ, and ſome ſay that Steward is derived of Stewe (that is) a place, and Ward, that ſignifieth a Keeper, Warden, or Governor: and others, that it is derived of Stede, that ſignifieth a place alſo, and Ward, as it were the keeper or governor of that place; but it is a word of many ſignifications.

In this place it ſignifieth an Officer of Juſtice, viz. a keeper of Courts, &c. Fleta deſcribeth the Office and Duty of this Officer at large moſt excellently: Provideat ſibi Dominus de Seneſchallo circumſpecto & fideli, viro provido & diſcreto & gratioſo, humili, pudico, pacifico, & modeſto, qui in legibus conſuetudinique provinciæ & Officio ſeneſchalciæ ſe cognoſcat & jura Domini ſui in omnibus teneri affectet, quique ſub ballivos Domini in ſuis erroribus & ambiguis ſciat inſtruere & docere, quique egenis parcere, & qui nec prece vel prætio velit à tramite Juſtitiæ deviare, & perverſe judicare, cujus officium eſt curias tenere Maneriorum & de ſubtractionibus conſuetudinum, ſerviciorum, reddituum, ſectarum ad cur', mercata, molendina Domini & ad viſus francpledg. aliarumque libertatum Domino pertinentium inquirat, &c. The reſidue pertaining to his Office is worth your reading at large. Every Steward of Courts is either by Deed or without Deed; for a man may be retained a Steward to keep his Court Baron and Leet, alſo belonging to the Mannor without Deed, and that Retainer ſhall continue untill he be diſcharged. The Lord of a Mannor may make admittances out of Court, and out of the Mannor alſo, as at large appeareth in my Reports.

Vide Sect. 92. & 379. Fleta lib. 2. cap. 66. Vide Statut. de extent. Manor 14. E. 1.

Vide li. 4. Caſes de Copiholds fol. 26, 27, 30.

luy que prist la terre, meſme le verge, ou un auter verge en noſme del ſeiſin, & pur cel cauſe ils ſont appelles Tenants per le verge, mes ils nont auter evidence, ſinon pur copie de Court roll.

ſhall deliver to him that taketh the Land the ſame rod, or another rod in the name of ſeiſin, and for this cauſe they are called Tenants by the verge, but they have no other evidence but by copy of Court roll.

Sect. 79.

¶ A *Le bailie.* This word bailie as ſome ſay cometh of the French word Bayliſe, in Latine Ballivus, but in truth Bayly is an old Saxon word, & ſignifieth a ſafe keeper or Protector, and baile or ballium is ſafe keeping or protection: And thereupon we ſay when a man upon ſurety is delivered out of priſon traditur in ballium, he is delivered into baile, that is, into their ſafe keeping or protection from priſon: and the Sheriff that hath cuſtodiam Comitatus, is called Ballivus, and the County ballivа ſua.

Vide Lamb. Expoſition of Saxon words.

¶ *Reve*, is derived of the Saxon word gereſa or gereve; and by contraction or rather corruption, Greve, or Reve; and is in Latine præfectus or præpoſitus. It ſignifies as much as Appruator a diſpoſer or director, as woodreeve, ſheep-reeve, ſhire-reeve, &c. whereof more ſhall be ſaid hereafter. Vide Fleta lib. 2. cap. 67. where he treateth of the Office of the Bayliff, and cap. 69. de Officio præpoſiti, of

Fleta lib. 2. cap. 67. & 69.

¶ Et aury en divers Seigniories & Manors, il y ad tiel cuſtome, ſi tiel Tenant que tient per cuſtome voloit alener ſes terres ou Tenements, il poit ſurrender ſes tenements a le Baily, ou a le Reeve; ou a deux prodes homes del Seigniorie, al uſe de luy que avera le terre, (ſaber en fee, ſimple, Fee taile, ou pur Terme de vie, &c. Et tout ces ils preſenteront al prochein Court, & donq; celuy q̄ avera la tre per copy de Court Rol, avera meſme la tre ſolonque lentent del ſurrender.

And alſo in divers Lordſhips and Manours there is this cuſtome, *viz.* if ſuch a Tenant which holdeth by cuſtome will alien his lands or tenements he may ſurrender his tenements to the Bailiff or to the Reeve, or to two honeſt men of the ſame Lordſhip, to the uſe of him which ſhall have the land to have in fee ſimple, fee taile, or for term of life, &c. and they ſhall preſent all this at the next court, & then he which ſhall have the Land by Copy of Court Roll, ſhall have the ſame according to the intent of the ſurrender.

the

the office of the Reeve, and what belongeth of duty and right to either of them, which words are too long here to be inserted, onely this I will take out of him, Ballivus autem cujuſcunque manerii, eſſe debet in verbo verax, & in opere diligens & fidelis, ac pro diſcreto appruatore cognitus plegiatus, & clericus qui de communioribus legibus pro tanto officio ſufficient' ſe cognoſcat, & quod ſit ita juſtus, quod ob vindictam ſeu cupiditatem non quærat verſus tenentes Domini nec alios, &c. Præpoſitus autem tanquam appruator & cultor optimus, &c. Domino vel ejus Seneſchallo palam debet preſentari cur injungatur officium illud indilate; non ergo ſic piger aut ſomnolentus, ſed efficaciter & continue commodum Domini adipiſci nitatur, & exarare, &c. The reſidue concerning both the Offices being worth your reading.

¶ *A le Bailie ou a le Reeve.* Littleton intendeth into the hands of the Lord by the hands of the Bayliff or the Reeve.

¶ *Ou al deux probes homes del Seigniorie.* The cuſtom doth guide theſe ſurrenders out of Court, and the cuſtom muſt be purſued. Vide lib. 4. fol. 25. Kite & Qualantins caſe.

¶ *Et tout ceo ils preſenteront al procheine court, &c.* By the ſurrender out of Court the Copyhold eſtate paſſeth to the Lord under a ſecret condition that it be preſented at the next Court according to the cuſtom of the Manor. And therefore if after ſuch a ſurrender, and before the next Court he that made the ſurrender dieth, yet the ſurrender ſtandeth good, and if it be preſented at the next Court Ce' a que uſe ſhall be admitted thereunto; but if it be not preſented at the next Court according to the cuſtome, then the ſurrender becometh void, and ſo was it clearly holden Paſch. 14. Eliz. in the Court of Common Pleas which I my ſelf heard.

Sect. 80.

¶ ET iſſint eſt accaboire, que en divers Seigniories, & divers Manors, ſont pluſors & divers cuſtoms en tielx caſes, quant a prender tenements, & quant a pleader, & quant as auters choſes & cuſtomes a faire, & tout ceo que neſt pas encountez reaſon, poit bien eſtre admitte & allow.

AND ſo it is to be underſtood, that in divers Lordſhips, and in divers Manors, there be many and divers cuſtomes, in ſuch caſes as to take Tenements, and as to plead, and as to other things and cuſtomes to be done, and whatſoever is not againſt reaſon, may well be admitted and allowed.

¶ *Sont pluſors & divers cuſtomes.* This was cautiouſly ſet down: for in reſpect of the variety of the cuſtoms in moſt Manors, it is not poſſible to ſet down any certainty, onely this incident inſeparable every cuſtom muſt have, viz. that it be cõſonant to reaſon, for how long ſoever it hath continued; if it be againſt reaſon, it is of no force in Law.

¶ *Encounter reaſon.* This is not to be underſtood of every unlearned mans reaſon, but of artificial and legal reaſon warranted by authority of Law: Lex eſt ſumma ratio.

Sect. 81.

¶ *Ils ſont appelles tenants per baſe tenures.* Of this ſufficient hath been ſpoken before.

¶ ET tiels tenants q̃ teignont ſolongz le cuſtome dun ſeignorie ou dun manor, coment que ils ont eſtate denheritance ſolongz le cuſtome del Seignioríe ou manñ unc pur ceo q̃ ils nõt aſe

AND theſe Tenants which hold according to the cuſtome of a Lordſhip or Manor, albeit they have an Eſtate of Inheritance according to the cuſtome of the Lordſhip or Manor, yet becauſe

franktenement per le cours del Common Ley, ils ſont appelles Tenants per baſe Tenure.

they have no Freehold by the courſe of the Common Law, they are called Tenants by baſe tenure.

Sect. 82.

¶ *Tenant a volunt ſolonque le cuſtome puit aver eſtate denheritance, &c.* Here note that Littleton alloweth that by the cuſtom of the manor, the copyholder hath an inheritance, and conſequently the Lord cannot put him out without cauſe.

¶ *Mes ſi home, &c. voile Leſſer terres ou tenements a un auter a aver & tener a luy & ſes heires a volunt le Leſſor, ceux parolx (a les heires de le leſſee) ſont voides. Car en ceſt caſe ſi le leſſee devie; & ſon Heire enter le Leſſor avera action de treſpaſſe envers luy, &c.* By which it is proved that by the death of the Leſſee, the leaſe is abſolutely determined, which is proved by this, that if the heir enter, the Leſſor ſhall have an Action of Treſpaſs, quare vi & armis, before any entry made by the Leſſor.

10 E. 4. 18. 22 E. 4. 13. 2 R. 2. barre 237. 11 H. 7. 22. 21 H. 7. 12.

¶ Et divers diverſities y ſont perenter tenant a volunt, que eſt eins per leaſe ſon Leſſor per le courſe del Common ley, & Tenant ſolōq; le cuſtome del Manor en le forme avantdit. Car ſ a volūt ſolonq; le cuſtome puit aver eſtate denheritance (come eſt avantdit) al volūt le Seignior ſolōq; le cuſtome & uſage del Manor. Mes ſi home ad Terres ou Tenements, queux ne ſont deins tiel Manor ou Seigniorie, ou tiel cuſtome ad eſte uſe en le forme avantdit, & voile leſſer tiels terres ou tenements a un auter, a aver & tener a luy & a ſes heires a le volunt le Leſſor, ceux parolx (a les heires de le Leſſee) ſont voides. Car en ceſt caſe ſi le Leſſee devie & ſon heire enter le Leſſor avera bon action de treſpaſſe envers luy, mes nemy illint envers le heire le terre per le cuſtome en aſcun cas, &c. pur ceo que le cuſtome de le Manor en aſcun cas luy puit aide de barrer ſon Seignior en action de treſpaſſe, &c.

And there are divers diverſities between Tenant at will which is in by Leaſe of his Leſſor by the courſe of the common Law, and Tenant according to the cuſtom of the Manor in form aforeſaid. For Tenant at will according to the cuſtom may have an eſtate of inheritance (as is aforeſaid) at the will of the Lord, according to the cuſtome and uſage of the Manor. But if a man hath Lands or Tenements which be not within ſuch a Manor or Lordſhip, where ſuch a cuſtom hath been uſed in form aforeſaid, and will let ſuch lands or tenements to another, to have and to hold to him, and to his heirs at the will of the Leſſor, theſe words (to the heirs of the Leſſee) are void. For in this caſe, if the Leſſee dieth, and his heir enter, the Leſſor ſhall have a good Action of Treſpaſs againſt him, but not ſo againſt the heir of Tenant by the cuſtom in any caſe, &c. for that the cuſtom of the Manor in ſome caſe may aid him to barre his Lord in an Action of Treſpaſs, &c.

¶ *Pur*

¶ *Pur ceo que le cuſtome de le Manor en aſcun caſe luy puit aider de barrer ſon ſeignior en action de treſpaſſe, &c.* Hereby it appeareth that by the opinion of Littleton the Lord againſt the cuſtome of the Manor cannot ouſt the Copyholder.

Sect. 83.

¶ Item lun tenant per le cuſtome en aſcuns lieux doit repairer & ſuſteiner ſes meaſons & lauter tenant a volunt nemy.

ALſo the one tenant by the cuſtome in ſome places ought to repair & uphold his houſes, and the other Tenant at will ought not.

¶ *Per le Cuſtome.* For what a Copyholder may or ought to do, or not do, the cuſtom of the Manor (a) muſt direct it, for Conſuetudo Manerii eſt obſervanda. (b) But if there be no cuſtome to the contrary, waſt either permiſſive or voluntary of a Copyholder, is a forfeiture of his Copyhold.

(a) Bracton lib. 2. fol. 76.

(b) Vide lib. 4. fol. 21, 22, &c. in caſes de Copyholds

Sect. 84.

¶ Item lun tenant per le cuſtõe ferra fealtie, & lauter nemy. Et pluſors auters diverſities y ſont perenter eux.

ALſo the one tenant by the cuſtome ſhall do fealty and the other not, and many other diverſities there be between them.

¶ *Un Tenant per le cuſtome ferra fealtie, & lauter nemy.* And the doing of fealty by a Copyholder, proveth that a Copyholder ſo long as he obſerves the Cuſtome of the Manor and payeth his ſervices hath a fixed Eſtate. For Tenant at will that may be put out at pleaſure ſhall not do fealtie. For to what end ſhould a man ſwear to be faithful and true to his Lord, and ſhould bear faith to him which he claimeth to hold of him, and that lawfully he ſhall do his cuſtomes and ſervices, &c. when he hath no certain eſtate, but may be put out at the pleaſure of the Leſſor, or he himſelf may determine it at his pleaſure? Of theſe kind of cuſtomary Tenants, and of many things concerning them, you may read more in the fourth Book of my Reports, fol. 21, 22, 23, &c. Thus much as I have here ſet down, may ſuffice for the underſtanding of ſuch Caſes and Opinions as Littleton hath expreſſed.

Vide Sect. 132.

Lib. 4. fol. 21, 22, 23, &c.

Finis Libri primi.

THE SECOND BOOK
Of the First Part of the
INSTITUTES
Of the
LAWES of ENGLAND.

CHAP. I. *Homage.* *Sect.* 85.

¶ HOmage eſt le pluis honorable ſervice, & pluis humble ſerbice de reverence, que Franktenant puit faire a ſon Seignior. Car quant le Tenant ſerra homage a ſon Seignior, il ſerra diſcinct, & ſon teſt diſcover, & ſon Seignior ſeera, & le Tenant genulera devant luy ſur ambideux genues, & tiendra ſes maines extendes, & joyntes enſembles enter les mains le Seignior, & illint dirra: Jeo

HOmage is the moſt honorable ſervice and moſt humble ſervice of reverence that a Franktenant may do to his Lord: For when the Tenant ſhall make Homage to his Lord, he ſhall be ungirt, and his head uncovered, and his Lord ſhall ſit, and the Tenant ſhall kneele before him on both his knees, and hold his hands joyntly together between the hands of his Lord, and ſhall ſay thus: I become your man

OUr Author having taught us in his former Book the ſeveral diſtinct eſtates of lands and tenements as moſt neceſſary to be known; for the underſtanding of thoſe two other Books, doth in this ſecond book treat of the tenures and ſervices, whereby the ſaid lands and tenements been holden, which he dividеth into 12. parts, viz. Homage, Fealty, Eſcuage, Knights Service, Socage, Frankalmoigne, Homage Auncеſtrel, Grand Serjeanty, Petit Serjeanty, Tenure in Burgage, in Villenage, and into Rents, wherein his method is moſt excellent, for he beginneth with Homage, becauſe it is the moſt humble ſervice of reverence expreſſing the duty of the Tenant to his Lord, and the affectionate love and protection of the Lord towards his Tenant, as hereafter ſhall appear. Secondly, Fealty, a ſacred ſervice, expreſſing by oath

oath his fidelity to his Lord.

Thirdly, Escuage, which is Servitium scuti, the service of the Shield.

Fourthly, Knights Service, for the defence of the Realm against outward hostility and invasions; which the better might be effected, if such duty, fidelity, and love were between Lords and Tenants, as ought to be, and as the Law expecteth.

Fifthly, Socage, the service of the Plough, aptly placed next to Knights Service, for that the Ploughman maketh the best souldier, as shall appear in his proper place.

Sixthly, Frankalmoigne, Service due to Almighty God, placed towards the middest for two causes: First, for that the middest is the most worthy and most honourable place: And secondly, because the first five preceding Tenures and Services, and the other six subsequent, must all become prosperous and useful, by reason of Gods true religion and service; for Nunquam prospere succedunt res humanæ, ubi negliguntur divinæ: Wherein I would have our Student follow the advice given in these ancient verses; for the good spending of the day.

Sex horas somno, totidem des Legibus æquis,
Quatuor orabis, des Epulisque duas.
Quod supereſt ultro sacris largire Camænis.

Seventhly, Homage auncestrell, ancient families, enjoying with their blood the ancient inheritance of their forefathers, as a great blessing of the Almighty.

8. & 9. Serjeanty grand & petit, due to the King only, to whom the highest and most eminent honour, ligeance, and reverence of all kind to me; which hath two notable effects; First, Imperii Majestas est tutelæ salus, according to the old rule: And secondly, it is an assured means of long continuance of Houses and Families in prosperous estate, whereof our Author speaketh in the Chapter before.

10. Then followeth the tenure of Burgage, of ancient Burghs and Cities, &c. which are to be supported for the honour of the King, and for the maintenance of trade and traffique, the life of all Common-wealths, especially of Islands.

11. Villenage, for the performance of service, yet necessary service, for the cleansing of Cities, Boroughs, Manors, &c. and for the better manuring of arable grounds, and increase of Husbandry.

12. And lastly, Tenure by Rents, which are called Vivi reditus, because the Lords and owners thereof doe live by them, which they shall enjoy the better, if trade and traffique be maintained, and our native commodities, which are rich and necessary, holden up and saleable at a reasonable value. And now understanding his method, let us peruse our Authors words.

And as our Author began his first Book with Fee-simple, which is the most principal and worthiest estate, so he beginneth his second Book with Homage; which is the most honourable and humble service.

(a) Glanvil lib.9.cap.1.Bract. fol.78.80.Britton fol.170.172, 173. Fleta lib.3. cap.16. Mir. c.3. de Homage, & l.5. sect.1.

Homage, is derived of (a) Homo, and it is called Homage, because when he doth this service, he saith, Jeo deveigne vostre homo: And in English Homage is called Manhood, so as the manhood of his Tenant, and the homage of his Tenant is all one. Mutua quidem debet esse Dominii & Homagii fidelitatis connexio, ita quod quantum homo debet Domino ex homagio, tantum illi debet Dominus ex Dominio, præter solam reverentiam.

(b) Lib. Rub. cap. 55.

¶ *Foyal & Loyal.* These words are of great extent, for they extend to the observation of the Lords counsel in whatsoever is honest and profitable. (b) Omnis homo debet fidem Domino suo de vita & membris suis, & terreno honore, & observatione consilii sui per honestum & utile, (comprehended in these words Foyal & Loyal) salva fide Deo & terræ Principi.

Service

de veigne vostre home de cestiour en avant, de vie, & de member, & de terrene honour, & a vous serra foyall & loyall, & foy a vous portera des Tenements que jeo claime de tener de vous; salve la fay que jeo doy a nostre Seignior le Roy, & honques le Seignior illue seyant, luy baiera.

from this day forward of life and limbe, and of earthly worship, and unto you shall be true and faithful, and beare you faith for the Tenements that I claime to hold of you (saving the faith that I owe unto our Soveraign Lord the King,) and then the Lord so sitting shall kisse him.

¶ *Service.* (c) Servitium in Lege Angliæ regulariter accipitur pro ſervitio, quod per tenentes Dominis ſuis debetur ratione feodi ſui. But ſervitium eſt duplex, Spirituale, whereof more ſhall be ſaid in the chapter of Frankalmoigne: & Temporale, whereof our Author here treateth: And he beginneth with Homage, 1. Becauſe it is moſt honourable, for, Honor plus eſt in honorante, quam in honorato. 2. It is pluis humble de reverence, and both of theſe for five cauſes on the part of a Tenant. Firſt, The Tenant when he doth his homage is diſcinctus, diſarmed or ungarded. Secondly, Nudo capite, bare-headed. Thirdly, Ad pedes Domini ſuper genua projectus. Fourthly, Ambas manus junctas inter manus Domini porrigit. Fifthly, Per verba omni ſupplici veneratione plena, he ſaith, Jeo deveigne voſtre home, &c. And for three cauſes on the part of the Lord: Firſt, The Lord doth ſit. Secondly, he encloſeth his Tenants hands between his own. Thirdly the Lord ſitting kiſſeth the Tenant. Prudent Antiquity did for the more ſolemnity and better memory and obſervation of that which is to be done, expreſs ſubſtances under ceremonies. (c) 2 H.4.6. Glanvil & Mir. ubi ſupra.

Nil ſine prudenti fecit ratione vetuſtas.

¶ 1. *Jeo deveigne voſtre home de vie & de member.* And therefore he is diſcinctus, for that he muſt never be armed againſt or oppoſite to his Lord, but both life and member muſt be ready for the lawful defence of his Lord.

¶ 2. *De terrene honour.* Expreſſed by kneeling at the feet of his Lord. 3. Debet quidem tenens manus ſuas utraſque ponere inter manus utraſque Domini ſui, per quod ſignificatur ex parte Domini protectio, defenſio, & warrantia, & ex parte Tenentis reverentia & ſubjectio. So as the holding up of the Tenants hands betokeneth reverence and ſubjection, and the Lords incloſing of his Tenants hands between his own, betokeneth protection and defence. Bract. fol. 80. Britton. fol. 173. b. &c. Fleta lib. 3. cap. 16.

¶ 4. *Et a vous ſerra foyal & loyal, & foy a vous portera, &c.* This faith, Fides; or Fœdus perpetuum, this perpetual league between the Lord and the Tenant is expreſſed by the Lords kiſſing of the Tenant: And ſome ſay, that Fœdus dicitur à fide, quia fides interponitur: And ſo firm and ſtrong was this league between them, that by the ancient Law of England, Nihil facere poteſt Tenens propter obligationem homagii, quod vertatur Domino ad exhæredationem, vel aliam atrocem injuriam. Nec Dominus Tenenti è converſo, quod ſi fecerint diſſolvitur & extinguitur homagium omnino & homagii connexio & obligatio, & erit inde juſtum judicium cum venerit contra homagium & fidelitatis ſacramentum, quod in eo in quo delinquunt puniantur, s. in perſona Domini, quod amittat Dominium, & in perſona Tenentis, quod amittat Tenementum. Bract. ubi ſupra. Britton fol. 174.

¶ *Des tenements queux jeo claime a tener de vous.* Britton ſaith, That (a) in doing of Homage he muſt name the Lands or Tenements for which he doth homage in certainty, and the reaſon is, Ne in captione homagii, contingat Dominum per negligentiam decipi, vel per errorem. (a) Britt. ubi ſupra. Bract. ubi ſupra. Glanvil. lib. 7. cap. 1. Mir. cap. 3. de Homage.

For the better underſtanding of that which ſhall be ſaid hereafter, it is to be known, That firſt, there is no land in England in the hand of any ſubject (as it hath been ſaid) but it is holden of ſome Lord by ſome kind of ſervice, as partly hath been touched before.

Secondly, All the lands (b) within this Realm were originally derived from the Crown, and therefore the King is Sovereign Lord, or Lord Paramount, either mediate or immediate of all and every parcel of land within the Realm. (b) 18 E. 3. 35. 44 E. 39. 48 E. 3. 9. 8 H. 7. 12.

Thirdly, That in ancient time Lords upon the creation of their Tenures did not onely reſerve rents, ſervices, and profits, &c. for which they might diſtrein and have other remedy, but alſo took an humble ſubmiſſion of his Tenant by promiſe and oath (for to homage fealty is incident) to be true and faithful to him for the Tenements holden of him, which ſubmiſſion is called Homage and Fealty according to the tenure reſerved.

¶ *Salve le foy que jeo doy a noſtre Seignior le Roy.* Both becauſe there is Homagium ligeum, which is due to the King onely, and alſo becauſe he is Sovereign Lord over all. Glanvil. lib. 9. cap. 1. Mir. c. 3. de Fealty. Bract. ubi ſupra. Britt. ubi ſupra.

I have ſeen an ancient Record in Anno 6. Edw. 1. in theſe words, Michael de North qui ſequitur pro Rege queritur, quod cum Dominus Rex ratione regiæ dignitatis & Coronæ ſuæ tale habeat privilegium quod nullus in Regno ſuo de aliquo qui ſit in Regno Angliæ alicui homagium facere debeat, vel aliquis hujuſmodi homagium ab aliquo recipere debeat, niſi facta mentione de homagio Domino Regi debito eidem Domino Regi fideliter obſervand' Walterus Exon. Epiſc. in contemptu Domini Regis & ad manifeſtam, quoad privilegium prædictum, ipſius Domini Regis exhæredationem, & ad damnum & dedecus ipſius Domini Regis ad valentiam decem Mill' Librarum de Henrico de Pomeray, Thoma de Kanc', Johanne de bello prato, Laurentio filio Ric. Johanne le Inter Inquiſ. apud Lanceſton, anno 6 E. 1. Cornub. in Thes.

Soer,

Soer, Willielmo de Alex', Eudone de Tranael, Rogero le gros, Johanne de Lunge, Rado de Bevill, Guidone Novant, Willielmo de Rouskerrek, & Hen. Cannel, accepit ſervitia contra privilegium prædict', nulla facta mentione de homagio & fidelitate Domino Regi debitis. And judgment in the end was given againſt the ſaid Biſhop.

¶ *Roy.* Our anceſtors the Saxons termed him Coning or Cyning, a name ſignifying power and skill, which by way of contraction we now call King. This name the Saxons with a ſmall alteration had from the Brittains who called him Koning or Koninck: in French he is called Roy, in Italian Re, in Spaniſh Rey, all derived from the Latine (Rex;) of the true ſignification whereof you ſhall read (d) plentiful matter in our old Books.

(d) Mir.cap.1.ſect.2.& cap.2. ſect.1.& 2. Bract. fol. 5. 107. 368,369, 340. Fleta lib.1.c.5. Forteſcue c.8. & 37. Stanf. pl. cor.98,99. & Prær.65.

So as Homage is divided, 1. In homagium ligeum, & non ligeum.

2. In homagium anteceſſorium, & non anteceſſorium. It is here neceſſary to be known, what Tenant that holdeth by homage ſhall do homage. (e) Item videndum quis poteſt homagium facere. Sciendum eſt quod quilibet liber homo tam maſculus quam fœmina, clericus & laicus, major & minor, dum tamen electi in Epiſcopos, poſt conſecrationem homagium non faciunt, quicquid fecerint ante, ſed tantum fidelitatem. Conventus autem Homagium non faciet de jure, ſicut nec Abbas, nec Prior, eo quod tenent nomine alieno ſcilicet nomine Eccleſiarum.

(e) Glanvil lib.9.cap.1. Bracton fol.78. b. Britt.cap.68.fol.170,171. Fleta lib.3.cap.16.

(g) One within the age of 21 years may do homage, but Bracton ſaith he cannot do fealty, becauſe in doing of fealty he ought to be ſworn, which an infant cannot be. But ſome opinions be in our Books to the contrary, viz. that an infant ſhall do fealty: but I take it to be meant of Homage, and herewith (h) agreeth Britton, who ſaith, Et tout ſoit que enfant deins age fait homage, pur ceo ne volons nous my que il face ſerement de fealtie, jeſque a taunt que il ſoit de plein age, & tout ſoit ceo common dit del people que fait de enfant fait deins age ne ſoit fait my a tener eſtable, volons neque dent que cheſcun feme de quel age que ils ſoient, facent homage a lour Seigniour ſolonque le ſtatute de la grand charter.

(g) Glanvil lib.9.cap.1. Britton lib.2. 78. Fleta lib. 3. cap.16. acc. 21 E.3.40. 26 E.3.63,64. 32 E. 3. age 80. & tit. per quæ ſervitia 9. 13 H.4.5. 33 H.6.16. 20 E.3. per quæ ſervit. 24.

(h) Britt.fol.171.

Glanvil ſaith, (i) women ſhall not do homage, but Littleton ſaith that a woman ſhall do homage, but ſhe ſhall not ſay, Jeo deveigne voſtre ſeme, but Jeo face a vous homage, and ſo is Glanvil to be underſtood, that ſhe ſhall not do compleat homage.

(i) Glanvil lib. 9. cap.1. F. N. B. 157. Regiſt. 296. Britt. ubi ſupra. Mirror cap.1. ſect.3.

Sect. 86.

¶ NO man of Religion when (k) he doth homage ſhall ſay, Jeo deveigne voſtre home, becauſe he hath profeſſed himſelf the man of God, yet ſhall he do homage, and ſhall ſay, (l) Jeo face a vous homage, & a vous ſerra foyall & loyall &c. and note that here Religion is taken largely, for it extends not onely to regular perſons, as Abbots and the like, but alſo to all Eccleſiaſtical perſons, as Biſhops, Deans, or any other ſole Eccleſiaſtical body politique, and ſo it is in uſe at this day, which alſo appears in our old Books.

(k) Glanv.lib.1. cap. 9. in fine Britton. lib.2. 78. Bracton cap.68. Fleta lib.3. cap.16.

(l) Vide Sect.96. & 133.

And it is to be obſerved that in old Books and Records, the homage which a Biſhop, Abbot, or other man of Religion doth, is called Fealty, for that it wanteth theſe words (Jeo deveigne voſtre home.) But yet in judgment of Law it is homage, becauſe he ſaith, I do to you homage, &c. and ſo of a woman.

¶ Mes ſi un Abbe, ou un Prior, ou auter hõe de religion ferra homage a ſon Seignior, il ne dirra, Jeo deveigne voſtre home, &c. pur ceo q̃ il ad luy profeſſe pur eſtre tant ſolement le home de Dieu: mes il dirra iſſint, Jeo vous face homage & a vous ſerra foyal & loyal, & foy a vous portera des Tenements que Jeo teigne de vous, ſalve la foy que Jeo doy a noſtre Seignior le Roy.

BBut if an Abbot or a Prior, or other man of Religion ſhall doe homage to his Lord, he ſhall not ſay, I become your man, &c. for that he hath profeſſed himſelf to be onely the man of God. But he ſhall ſay thus, I doe homage unto you, and to you I ſhall be true and faithful, and faith to you bear for the Tenements which I hold of you, ſaving the faith which I do owe unto our Lord the King.

Sect.

Sect. 87.

¶ *Pur ceo que ne ſ convenient, &c.* By this it appeareth (m) that Argumentum ab inconvenienti plurimum valet in lege, as often ſhall be obſerved hereafter. Non ſolum quod licet ſed quid eſt conveniens eſt conſiderandum: Nihil quod eſt inconveniens eſt licitum.

(m) For like reaſons ab inconvenienti. vide ſect. 138, 139. 231. 269. 440. 478. 665. 722. 730. 21. H. 713. F. N. B. 230. d. 16 H. 7. 9.

¶ Item ſi feme ſole ferra homage a ſon Seignior, le ne dirra, Jeo deveigne voſtre feme, pur ceo que neſt convenient que feme dirra que el deviendra feme a alcun home forſque a ſa baron quant el eſt eſpouſe: mes il dirra, ieo face a vous homage, & a vous ſerra foyall, & loyall, & foy avous portera des tenements que ieo teigne de vous, ſalve la foy que ieo doy a noſtre Seignior le Roy.

ALſo if a woman ſole ſhall do homage, ſhe ſhall not ſay, I become your woman; for it is not fitting that a woman ſhould ſay, that ſhe will become a woman to any man but to her husband when ſhe is married: but ſhe ſhall ſay, I do to you homage, and to you ſhall be faithful and true, & faith to you ſhall bear for the tenements I hold of you, ſaving the faith I owe to our Soveraign Lord the King.

Sect. 88.

¶ Item home puit deier un bone note in M. 15 E. 3. lou un home & ſa feme fiet homage & fealty en le common Bank, ou eſt eſcrie & tiel forme. Nota, que J. Leukner & Elizabeth ſa feme, fiet homage a W. Thorpe en ceſt maner; Lun & lautrien dyont jointment lour mains enter les mains W. T. & le baron dit en ceſt forme: Nous vous terromus homage, & foy a vous porterons, pur les tenements q̄ nous teignomus de A. voſtre conuſor q̄ a vous ad graūt noſtre ſerbices en B. & C. & auters villes, &c. encounk touts gents: ſalve la foy que nous devous a noſtre Seig-

ALſo a man may ſee a good note in M. 15 E. 3. where a man and his wife did homage and fealty in the Common Place, which is written in this forme: Note, that *I. Lewknor* and *Eliz.* his wife did homage to *W. Thorpe* in this manner, The one and the other held their hands joyntly between the hands of *W. T.* and the Husband ſaith in this forme: We do to you Homage, and faith to you ſhall bear for the tenements which we hold of *A.* your Conuſor, who hath granted to you our ſervices in *B.* and *C.* and other Townes, &c. againſt all Nations, ſaving the faith which we owe to our Lord the King and to his heirs, and to our

¶ In this (n) Record three things are to be obſerved.

(n) Mich. 15 E. 3. tit. Avowry 109.

2. How neceſſary and profitable Records and obſervations are; albeit they were not publiſhed in print, for at the time when Littleton wrote this Record was not printed.

2. That the Husband and Wife doing homage, the Husband ſhall ſpeake the words for them both, viz. We do to you homage, &c.

3. That the Homage which the Husband and Wife do, is the very homage which the Wife would do alone; but this joynt Homage done by the Husband and Wife, is intended to be before Iſſue had between them, whereof more ſhall be ſaid hereafter. And it is to be obſerved, that very few Caſes ruled or reſolved in the Reign of Edward the third, but the ſame or the like, had

had been ruled or resolved in the reigns of Edward the second, Edward the first, or before; as for example, for warrant hereof, vide Hill. 17 E. 2. Rot. Parl. &c.

Hill. 17 E. 2. Rot. Parl. &c.

nior le Roy, & a ſes heires, & a noſtr̄ autrs Seigniorz: & lun & lauter luy baſeront. Et puis ils fiet fealty, & lun & lauter tiendront lour mains ſur un lieur, & le baron dit les parolr, & ambid' baſeront le lieur.

other Lords, and both the one and the other kiſſed him. And after they did fealty, and both of them hold their hands upon the Book, and the Husband ſaid the words, and both kiſſed the Book.

Sect. 89.

¶ *Et a mes auters Seigniors.* This ſaving for other Lords is good for explanation, albeit the homage is referred only to the tenements which he holdeth of him to whom he doth the homage.

¶ NOta, ſi un hõe ad ſeveral tenancies queux il tient de ſeverals Seigniorz, ſ. cheſcun tenantie per homage, donq̃ quant il fait homage a un des Seigniorz, il dirra en le fine de ſon homage fait, Salve la foy q̃s jeo doy a noſtr̄ Seignior le Roy, & a mes auters Seigniorz.

NOte, if a man hath ſeveral Tenancies which he holdeth of ſeveral Lords, that is to ſay, every tenancy by homage, then when he doth homage to one of his Lords, he ſhall ſay in the end of his homage done, Saving the faith which I owe to our Lord the King, and to my other Lords.

Sect. 90.

¶ EN *droit dun auter.* As the Husband and wife in the right of his wife, the Biſhop in right of his Biſhoprieke, &c. the Abbot or Prior in right of his Monaſtery, &c. (p) But no Corporation aggregate of many perſons capable, be the ſame Eccleſiaſtical or Temporal, can do homage, as a Deane and Chapter, Major and Commonalty; and ſuch like, albeit they be ſeiſed in fee of lands holden by homage, yet ſhall not they do homage. And the reaſon is, becauſe that homage muſt be done in perſon, and a Corporation aggregate of many cannot appear in perſon; for albeit the bodies naturall, whereupon the body politique conſiſts may be ſeen, yet the body Politique or Corporate it ſelf cannot be ſeen, nor do any act but by Atturney, and homage muſt ever be done in perſon, &c. And albeit an

(p) 33 H. 8. tit. Fealtie. Brack. 15. Lib. 1. fol. 11. Lib. 7. fol. 10. Lib. 10. fol. 31.

¶ NOta, que nul ſerra homage, mes tiel que ad eſtate en Fee ſimple, ou en Fee taile, en ſon droit de meſme, ou en droit dun auter. Car il eſt un Maxime en Ley que il q̃ ad eſtate forſq; pur terme de vie, ne ſerra homage, ne prendra homage. Car ſi feme ad terres ou tenements en Fee ſimple, ou fee taile, queux il tient de ſon Seignior per homage, & prent baron, & ont iſſue, donque le Baron en la vie la feme ſerra homage,

NOte, none ſhal do homage, but ſuch as have an eſtate in fee ſimple, or fee taile in his own right, or in the right of another. For it is a Maxime in Law, that he which hath an eſtate but for term of life, ſhall neither do homage or take homage. For if a woman hath lands or tenements in Fee ſimple or in Fee taile which ſhe holdeth of her Lord by homage, & taketh Husband, & have iſſue, then the Husband in the life of the wife ſhall do ho-

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pur ceo que il ad title daver les tenements per le curteſie Dengleterre ſil ſurveſquiſt la feme, & auxy il tient en droit de ſa feme. Mes ſi la feme deby devant homage fait per le baron en la vie ſa feme, & le baron ſoy tient eins come tenant per le curteſie, donques il ne ſerra homage a ſon ſeignior, pur ceo que il adonque nad eſtate forſque pur terme de vie.

¶ Plus ſerra dit de homage & le tenure per homage auncetrel.

mage, becauſe he hath title to have the tenements by the courteſie of *Eng.* if he ſurviveth his wife; and alſo he holdeth in right of his wife. But if the wife dies before homage done by the husband in the life of his wife, and the husband holdeth himſelf in as tenant by the courteſie; then he ſhall not do homage to his Lord, becauſe he then hath an eſtate but for term of life.

¶ More ſhall be ſaid of Homage in the tenure of Homage anceſtrell.

Abbot and Covent is a Corporation aggregate of many, yet becauſe the Covent are all dead perſons in Law, the Abbot alone in nature of a ſole Corporation ſhall do homage.

¶ *Un maxime en Ley.* A Maxime is a propoſition to be of all men confeſſed and granted without proof, argument, or diſcourſe: Contra negantem principia non eſt diſputandum. But of this I meddle not, hath been ſaid before.

¶ *Il que ad eſtate forſque per terme de vie.* (q) A Parſon or Vicar of a Church that hath a qualified Fee, (r) and yet to many intents upon the matter but an eſtate for life, can neither receive homage nor do homage, as a Biſhop, an Abbot, or any ſuch like that hath a Fee abſolute may. (ſ) So if a man and his wife be ſeiſed in Fee of a Seignior in the right of his wife, the husband

(q) Glanvil lib.9. cap.4. Britton fol. 170. Temps E.1. tit. Juriſdictrum 13.
(r) 8 E.4.28. 39 E.3.15. 3 E.3. Avowry 175.
(ſ) 2 E.2. Avowry 183. F.N.B. 257. 13 E.3. gard. 39.

ſhall not receive homage alone, but he and his wife together. (t) But if the husband in that caſe hath iſſue by his wife, then he ſhall receive homage alone during the life of his wife: and the reaſon is, becauſe he by having of iſſue is intitled to an eſtate for term of his own life, in his own right, and yet is ſeiſed in Fee in the right of his wife, ſo as he is not a bare tenant for life. But if his wife dy, then he hath onely but an eſtate for life, and then he cannot receive homage. Yet Tenant for life or years of a Seignior (u) ſhall have Ward, Marriage and Relief, and ſhall ſuppoſe that the Tenant died in the Fealty of the Pl. (x) Fieri poſſunt homagia libera homini tam maſculo quam fœminæ, tam majori quam minori, tam clerico quam laico.

(t) 27 Aſſ. p.51. F.N.B. 257. 13 H.6. Avowry 21. 43 E.3. 13. 44 E.3.41. 3 E.3. Avowry 175. 13 E 3.2. gard.39.
(u) 22 E.3. fol.19. gard.44. 6 E.2. gard. 122. 13 E.3. gard.39. 22 E.3. gard.44.
(x) Glanvil lib.9. cap.3. 18 E.3.7. 43 E 3.13. 44 E.3.41. 13 H.6. Avowry 21. 8 H.6.13. 7 E.4.27. F.N.B. 257.

¶ *Et ount iſſue, donque le baron en la vie la feme ſerra homage.* The reaſon hereof is rendred before; and alſo that after the death of his wife, he being but a bare Tenant for life, ſhall do no homage: for regularly it is true, that he that cannot receive homage in reſpect of the weakneſs of his eſtate in the Seignior, ſhall not do homage if he hath a like eſtate in the Tenancy.

If a man hold of the King, and hath iſſue divers daughters, and dieth, the King ſhall have homage of every one of theſe daughters. And this (a) appeareth by the ſtatute de Hibernia anno 14 H.3. to be the Common Law; for that Act ſaith, In Regno noſtro Angliæ talis eſt lex & conſuetudo, quod ſi quis tenuerit de nobis in capite, & habuerit filius hæredes ipſo patre defuncto, anteceſſores noſtri habuerunt & ſemper nos habuimus & cepimus homagium de omnibus hujuſmodi filiabus, & ſingulæ earum tenerent de nobis in capite in hoc caſu. And therefore where by the (b) ſtatute De Prærogativa Regis it is provided, ſi una hæreditas, &c. that is but an affirmance of the Common Law. (c) But this is to be underſtood where the coheirs be of full age; for if they be within age, and in ward to the King, Primogenita tantum faciet homagium pro ſe & ſororibus ſuis, & aliæ ſorores cum ad ætatem pervenerint facient ſervitia Dominis feodorum per manum primogenitæ. (d) And therefore if a man holds of a common perſon by the ſervice of homage, and hath iſſue divers daughters and dieth, the eldeſt daughter onely ſhall do homage for her and all her ſiſters. And this appeareth alſo by the ſtatute of Hibernia, Primogenita tantum faciet homagium Domino pro ſe & omnibus ſororibus ſuis. And the reaſon is there rendred afterward, Quia omnes ſorores ſunt quaſi unus hæres de una hæreditate. (e) But if the Coparceners in that caſe make partition, then every one ſhall do homage, becauſe now it is not una, ſed diverſa hæreditas. (f) And ſo it is if one make a feoffment in

(a) 14 H.3. tit. prærog.5.
(b) Prærog. Regis cap.5.
(c) Statut. de homagio capiendo Temps E.1.
(d) Glanvil lib.7 cap.3. & lib.9. cap.2. Bract. lib.2. de homag capiend. & lib.2. fol.78,80. Britton. fol.168. b. 171, 172. Flera lib.3. cap.18. & lib.2. cap.60.& lib.5.cap.9. F.N.B. 161.259. Stanf. prær.22,24.
(e) F.N.B. 162. Vide 11 E.3. Avowry 101.
(f) 45 E.3.23. 24 E.3.73. Marlbridge cap.9. F.N.B. 162.

fee, (which is a partition in law for that part) the feoffee ſhall do homage, for every Tenant in common ſhall do ſeveral ſervices. And it hath been adjudged (g) in our Books, that if the eldeſt Coparcener do homage to the Lord, and afterward the younger ſiſter maketh a feoffment in fee of her part, the Lord ſhall have homage for the part of the younger ſiſter: for that which was una hæreditas, one Inheritance by Law, by the alienation, which is her act, is (as hath been ſaid) divided and become in groſs, and the Coparcenary defeated.

(g) 2 E.2. Avowrie 179.

But if Tenant enfeoffe divers men in fee joyntly, (h) all theſe joyntenants ſhall joyntly do their homage and their fealty alſo. (i) If homage be due by the Tenant, and he maketh a feoffment in fee, the feoffor ſhall not do homage, becauſe albeit he is ſuppoſed to be Tenant in ſome caſes, quant al avowrie, yet the Feoffee is very Tenant, and homage ſhall ever be done by the very Tenant; but that very Tenant needeth not to be very Tenant of the land, and therefore the Meſne, becauſe he is very Tenant to the Lord Paramount, (though he be not Tenant of the Land) ſhall do homage. And ſo it is of the Diſſeiſee, and of Tenant in Tail after a feoffment in fee, for in that caſe the Donee is very Tenant to the Donor.

(h) 7 E.4.27,28. 14 H.4.38. 1 H.5. grant.43. 21 E.3. gard.116.

(i) 48 E.3.8. 15 E.4.13. 5 E.4.3.

If a Tenant that holdeth by homage maketh a feoffment in fee of part, (k) that Feoffee ſhall do homage, and ſo ſhall every Feoffee of what part ſoever.

(k) 22 E.4.22.

If there be two Coparceners or Joyntenants of a Seignior, if the Tenant doth homage and fealty to one of them, (l) he ſhall be excuſed againſt the other.

(l) 3 E.2. Avowrie 187. 13 H.4.5. 13 R.2.tit. avowrie 89. 8 H.3.tit.preſcription 38. Hil. 22 E.2. coram Rege Rot. 43.

If homage be parcell of a tenure, it is a preſumption that the tenure is by Knights Service, unleſs the contrary be proved, but of it ſelf it maketh not Knights ſervice. And yet by cuſtome the heir of him that holds by homage onely may be in ward.

More ſhall be ſaid of Homage in the title of Homage Anceſtrel.

CHAP. 2. *Fealty.* *Sect.* 91.

¶ FEaltie in French is ſeaulty, and is (a) derived of the Latine word Fides or fidelitas.

(a) Bracton lib.2. fol.80. a. Brit. fol. 173. Britton Regiſt. origin.502. Mirror cap.3. de ſerement, & de fealt. ſtatut. de 17 E.2.tit. homage.

¶ *Et quant Franktenant.* Every Freeholder, except Tenant in Frankalmoign, ſhall do fealty. (b) And yet ſome that are not Tenants of any Freehold ſhall do fealty, as a Tenant for years ſhal do fealty. Bracton ſaith, De nullo tenemento quod tenetur ad terminum ſit homaginm ſit tamen inde fidelitatis ſacramentum.

(b) Bracton lib.2. fol.80. Fleta lib.3. cap.16. Littleton fol.29. nu.132. 40 E.3.34. 9 H.6.43. 10 H.6.13. 5 H.5.12. 9 E.4.1. 21 E.4.29. 5 H.7.11.

¶ *Que a vous ſerra foyal & loyal, & foy a vous portera des Tenements que jeo claime a tener de vous, & que loialment a vous ſerra les cuſtomes & ſervices*, &c.

¶ Fealty idem eſt quod Fidelitas en Latin. Et quant franktenant ſerra fealty a ſon Seignior, il tiendra ſa maine dexter ſur un Lieur & dira iſſint; Ceo oyes vous mon Seignior, q̃ jeo a vous ſerra foyal & loyal, & foy a vous portera des tenements q̃ jeo claim a tener d̃ vous, & q̃ loyalment a vous ſerra les cuſtoms & ſervices queux fait a vous doy as termes aſſignes; ſi come moy aide Dieu & ſes Saints: & baiſera le Lieur. Mes il ne genuflera quar il fait Fealty, ne ſerra tiel humble reverence come avant eſt dit de homage.

Fealty is the ſame that *Fidelitas* is in Latine. And when a Freeholder doth fealty to his Lord, he ſhall hold his right hand upon a Book, and ſhall ſay thus; Know ye this, my Lord, that I ſhall be faithful and true unto you, and faith to you ſhall bear for the Lands which I claim to hold of you, and that I ſhall lawfully do to you the cuſtomes and Services which I ought to do at the terms aſſigned: ſo help me God and his Saints: and he ſhall kiſſe the Book. But he ſhall not kneel when he maketh his Fealty, nor ſhall make ſuch humble Reverence as is aforeſaid in Homage.

(c) Fealty

(c) Fealty is a part of Homage, for all the words of Fealty are comprehended within Homage, and therefore Fealty is incident to Homage. (c) Mirror cap.3. de ser. & de fealtie.

¶ *Sicome moy aide Dieu.* As homage is the more honourable service, so Fealty is a service more sacred, because he is sworn thereunto. And the reason wherefore the Tenant is not sworn in doing his Homage to his Lord, is, for that no subject is sworn to another subject to become his man of life and member, but to the King onely, and that is called the oath of Allegeance or Homagium ligeum. And those words for that purpose are omitted out of Fealty which is to be done upon oath. And Littleton said well (when a Freholder doth Fealty,) (d) for the Fealty of him that holdeth in Villenage differeth from the Fealty of the Freholder. For the Villein holding his right hand upon the book shall say thus to his Lord, Hear you my Lord A. that I A. B. from this day forward shall be to you true and faithful, and shall owe you Fealty for the Land that I hold of you in Villenage, and shall be justified by you in body and goods: so help me God, &c. as by the Act appeareth. (d) Stat. de 17 E.2. tit. Homage in le Abridgement.

Sect. 92.

¶ Et graund diuersity y ad p enter fealans de fealtie & de homage: car homage ne poit estre fait forsque al sñr mes le Seneschal de court le sñr, ou Bailife, puit prender fealtie pur le Seignior.

And there is great diversity between the doing of Fealty & of Homage: for Homage cannot be done to any but to the Lord himself; but the Steward of the Lords Court, or Bailife, may take Fealty for the Lord.

¶ Bracton lib. 2. fol. 80. saith thus; Sciendum est quod non per procuratores nec per literas fieri poterit Homagium, sed in propria persona tam Domini quam Tenentis capi debet & fieri. Bracton lib.2. fol.8. 21 E.4.17. acc. 2 F.3.10. 32 H.6.23. lib.9. fol.76.

¶ *Mes le Seneschal, &c. ou Bailife, poet prender fealtie.* This is so evident as it needeth no explanation. Vide for the signification of Seneschal and Bailife, sect.78,79,248, & 379.

Sect. 93.

¶ Item Tenant a terme de vie ferd fealtie, & uncore il ne ferra homage: Et divers autres diversities y sont perenter homage & fealtie.

Also Tenant for term of life shall do Fealty, and yet he shall not do homage: and divers other diversities there be between Homage and Fealty.

¶ The Tenant must do Fealty in person, because he must be sworn unto it, and no man can swear by the Common Law by Attorney or Proctor. Lib.9. fol.76.

Sect. 94.

¶ Item home poit heir 15 E.3. coment home & sa feme ferront homage & fealtie en common banke, quel est escript devant en Tenure de homage.

Also a man may see in 15 E. 3. how a man and his wife shall do Homage and Fealty in the Common place, which is written before in the Tenure of Homage.

¶ This is evident and appeareth before: and if Lords knew what benefit they may reap by receiving of Homage and Fealty, they would not neglect them. (e) for by the receiving of either of them, it is a sufficient seisin of all manner of services, as by the words (f) of either of them appears. Now if it be demanded what (e) Lib.4. fol. 8. & 9. Bevils case. 13 E.4.5. (f) Vide sect.118,130, 131,138.

what difference is betwæn the oath of Fealty, when it is done to the King in reſpect of a Tenure, and the oath which every Subject ought to take in reſpect of his Allegeance. Littleton here ſetteth down the oath of Fealty. Now the

(g) Britt. ca. 29. Calvins caſe, lib. 7. fol. 6. b. 12 H. 7. 18.

(g) Oath of Allegeance is thus, You ſhall ſwear, &c. Then it may be demanded, Where and when is this oath to be taken? and it is anſwered, That whoſoever is above the age of 12. years, is to be ſworn in the Tourn, unleſs he be within ſome Leet, and then in the Leet. And I read amongſt the Laws of Saint Edward,

Lambert. 135.

Quod hanc Legem invenit Arthurus, qui quondam fuit inclytiſſimus Rex Britannorum, & ita conſolidavit & confœderavit Regnum Britanniæ univerſum ſemper in unum. Hujus legis authoritate expulit Arthurus prædictus Saracenos & inimicos à regno. Lex enim iſta diu ſopita fuit & ſepulta, donec Eadgarus Rex Anglorum excitavit & erexit in lucem, & illam per totum Regnum obſervari præcepit. Which Law in ſome manner is obſerved at this day. But to return to Littleton.

Plus ſerra dit de Fealtie en le Tenure en Socage, & en le Tenure en Frankalmoigne, & en le Tenure per Homage Auncestrel.

More ſhall be ſaid of Fealty in the Tenure in Socage, and in Frankalmoign, and in the Tenure by Homage Auncestrel.

Chap. 3. *Eſcuage.* *Sect.* 95.

(a) Mir. cap. 1. ſect. 3. Britt. fol. 162, &c. Ockam cap. Quid ſit ſcutagium.

¶ *Eſcuage.* (a) In Latine Scutagium, (id eſt) Servitium ſcuti, Service of the Shield. Hereby it appeareth that right Interpretations and Etymologies are neceſſary: For, Ad rectè docendum oportet primum inquirere nomina, quia rerum cognitio à nominibus rerum dependet.

Nomina ſi neſcis, perit cognitio rerum.

And herewith agreeth that which is ſaid, Primò excutienda eſt verbi vis, ne ſermonis vitio obſtruatur oratio, ſive Lex ſine argumentis.

Scutum in French is Eſcue, and thereof cometh the Eſcuer, i. e. Scutifer, which we uſually call Armiger.

(b) Bract. lib. 2. fol. 36. a. Fleta lib. 3. cap. 14. Ockam ubi ſupra. 27 Aſſ. 52. 31 Aſſ. 38.

(b) Of this Bracton ſaith, Item Scutagium dicitur, quòd talis præſtatio pertinet ad ſcutum quod aſſumitur & ſervitium militare. And Fleta ſaith, Sunt quædam ſervitia forinſeca, & dici poſſunt regalia quæ ad ſcutum præſtantur, & inde habemus ſcutagium, & ratione ſcuti pro feodo militari reputatur. And Ockam ſaith, Hæc itaque ſumma, quia nomine ſcutorum ſolvitur, ſcutagium nuncupatur.

¶ Escuage eſt appell en Latine Scutagium, teſtaſcavoir, Servitium Scuti: Et tiel Tenant que tient ſa terre per eſcuage, tient per ſervice de Chivaler. Et auſi il eſt communement dit, que aſcun tient per un fee & ſervice de Chivaler, & aſcun per le moietie dun fee de ſervice de Chivaler, &c. Et il eſt dit, que quant le Roy face voyage Royal en Eſcoce pur ſubduer les Scotes, donqs il que tient per un Fee de Service de Chivaler covient eſtr obe le Roy per 40 jours, bien & convenablement array pur le Guerre: & celuy que tient ſa terre per le moietie

Escuage is called in Latine *Scutagium*, that is, Service of the Shield: and that Tenant which holdeth his Land by Eſcuage, holdeth by Knights Service. And alſo it is commonly ſaid, That ſome hold by the Service of one Knights Fee, and ſome by the half of a Knights Fee. And it is ſaid, That when the King makes a voyage Royal into Scotland to ſubdue the Scots, then he which holdeth by the Service of one Knights Fee ought to be with the King forty dayes, well and conveniently arrayed for the Warr: and he which holdeth his Land by the moietie of a Knights

moietie

moietie dun Fée de Chivaler covient eſte ove le Roye per 20 jours: & il que tient ſon terre per le quart part dun Fée de Chivaler covient eſte ove le Roy per 10 jours: & iſſint que pluis, pluis; & que meins, meins.

Fee ought to be with the King twenty dayes: and he which holdeth his Land by the fourth part of a Knights Fee ought to be with the King ten dayes: and ſo he that hath more, more; and he that hath leſſe, leſſe.

¶ (c) *Et tiel tenant que tient ſon terre per Eſcuage tient per Service de Chivaler.* (d) For as Fealty is incident to Homage, ſo Homage and Knights Service be incident to Eſcuage, and by the grant of Services, Eſcuage paſſeth with the reſt. Every Tenure by Eſcuage is a Tenure by Knights ſervice: but every Tenant that holdeth by Knights ſervice holdeth not by Eſcuage, as ſhall be ſaid hereafter. But note here the wiſdom of Antiquity; (e) Mavult enim Princeps domeſticos quam ſtipendiarios bellicis apponere caſibus, that is, to be ſerved in his warrs by his own ſubjects rather then by ſtipendary Forreiners.

(c) Mirr. cap.1. ſect.3.

(d) 2 E.3.8. b. 19 E.3. Avowry 294. 26 H.8.1. 2. 20 E.3. Per que ſervic. 18 43 E.3. 22. F.N.B. 83,84.

(e) Lib. rub.

¶ *Un fee de ſervice de Chivaler.* (f) There is great diverſity of opinions concerning the contents of a Knights fee, that is, how much land goeth to the livelihood of a Knight. For ſome ſay that a Knights Fee conſiſteth of eight hides, and every hide containeth an hundred acres, and ſo a Knights Fee ſhould contain eight hundred acres: others ſay that a Knights Fee containeth ſix hundred and eighty acres: others ſay that an Oxgang of land containeth fifteen acres, and eight Oxgangs make a Plowland; by which account a Plowland contains an hundred and twenty acres; and that Virgata terræ, or a yardland, containeth twenty acres. But I hold that a Knights Fee, an hide or Plowland, a Yardland, or Oxgang of lands, do not contain any certain number of acres. But a Knights Fee is properly to be eſteemed according to the quality, & not according to the quantity of the land; that is to ſay, by the value, and not by the content. And therefore it is very true which Maſter Camden in his Britannia, pag.136. ſaith, viz. Subſequenti ætate ex cenſu, ut colligitur, facti ſuerunt equites, &c. And antiquity thought that twenty pound land was ſufficient to maintain the degree of a Knight, as appeareth in the ancient treatiſe De modo tenendi Parliamentum tempore Regis Ed. filii Regis Etheldredi. Where it appeareth that Comitatus, (to wit) an Earldom, conſtat ex viginti feodis unius militis, quolibet feodo computato ad viginti libratas. Baronia conſtat ex 13 feodis, & 3 parte unius feodi militis, ſecundum computationem prædictam; Unum feodum militis conſtat ex terris ad valentiam 20 l. Which antiquity I cite, for that it concurreth with the Act of Parliament, anno 1 E.2. de militibus, by which Act Cenſus militaris, the ſtate of a Knight, is meaſured by the value of 20 pounds per annum, and not by any certain content of acres; and with this agreeth the Statute of W.1. cap.35. and F.N.B. fol.82. where twenty pound of land in Socage is put in equipage of a Knights Fee: and this is the moſt reaſonable eſtimate, for one acre may be better then many others, ſo as he which hath 680 or 800 acres of ſome barren land had not according to the ancient account a ſufficient revenue to maintain the degree of a Knight, and he which had a leſs number of acres of ſome land of the value of 20 li. per annum, had a ſufficient livelihood in thoſe dayes for the maintenance of a Knight. So antiquity thought that 400 Marks of land per annum was a competent livelihood for a Baron, and 400 pounds per annum ad ſuſtinendum nomen & onus of an Earle; and of late time 800 Marks per annum of a Marquels, and 800 pound per annum of a Duke: ſo that their yearly Revenue was eſtimated by the value, and not by the content. And one Plowland, Carucata terræ, or a Hide of land, Hida terræ, (which is all one) is not of any certain content, but as much as a Plow can by courſe of husbandry plow in a year. And therewith agreeth Lambert, verbo Hide. But a Plowland may contain a meſſuage, wood, meadow, and paſture, becauſe that by them the Plowmen and the cattel belonging to the Plow are maintained, Vide Temps E.1. tit. Briefe 860. 4 E.3.47. Pl.Com: in Hill and Granges caſe, fol.168. Vid.6. E.3. fol.42. and 39 H.6.8. 2. And venerable Beda calleth a Plowland, Familiam, a family, becauſe it containeth neceſſary things for the maintenance of a family. And Priſot well ſaith in 35 H.6. fo.29. that a Plow may till more land in a year in one Country then in another, and therefore it ſtands with reaſon, that a Plowland ſhould be leſs in one place then in another. 41 E.3. tit. fine 40. and 13 E.3. fine 67. A fine ſhall not be received de una Virgata terræ, for the uncertainty. Vide 39 H. 6. 8. But an acre of land is certain by the ſtatute De terris menſurandis. Note alſo (Reader) that every Plowland of ancient time was of the yearly value of five nobles per annum, and this was the living of a Plowman or Yeoman; and Ex duodecim carucatis conſtabat unum feodum militis, which amount to 20 pounds per annum. And this you may ſee Termino Paſch. an. 3 E.1. Coram Rogero de Seyton & ſocijs ſuis Juſticiarijs apud

(f) Lib.9. fol. 123. in Lowes caſe.

Vide Lib.7. fol.33,34. Nevils caſe.

Weſtm. Ebor. Ro.10. Radulphus de Normanville petens in brevi de medio queritur contra Luciam de Kyme, quod cum ipſa teneat de ipſo duas carectatas terræ in Coningſton per homagium & ſervitium militare, unde duodecim carucatæ terræ faciunt unum feodum militis pro omni ſervitio, ipſa diſtrinxit ipſum ad faciendum ſectam ad curiam ſuam de Thorneton in Craven, &c.

And it is to be obſerved that the relief of a Knight, and all above him which be noble, is the fourth part of their yearly revenue, as of a Knight five pound, which is the fourth part of 20 pound. So una Baronia conſtat ex 13 feodis militum, & de 3. parte unius feodi militis, which amount to 400 Marks; and therefore his relief is the fourth part of this, viz. 100 Marks: and an Earldome conſiſts of twenty Knights fees, which amount to 400 pound, (as before it appeareth by the ſaid ancient Record Demodo tenendi Parliamentum, &c.) and therefore his relief is 100 pound. And this alſo appeareth by the Statute of Magna Charta, cap. 2. and by the equity of this ſtatute: inſomuch as a Marquiſdome, which conſiſts of the revenue of two Baronies which amount to 800 Marks, ſhall pay according to that juſt proportion for his relief 200 Marks; and becauſe a Dukedome conſiſts of the revenues of two Earldomes, viz. 800 pound per annum, a Duke ſhall pay 200 for a relief, which is alſo the fourth part of his Revenue: and with this agree the Records of the Exchequer.

Note, (Reader) At the time of the making of the Statute of Magna Charta, 5. 9 H. 3. there was not any Duke, Marqueſſe or Viſcount in England, (and therefore the Statute could not make mention of them) and Edward the eldeſt ſon of King E. 3. called the black Prince, was the firſt Duke in England after the Conqueſt, and Robert Earl of Oxford in the reign of R. 2. was the firſt Marqueſſe: Sic enim inter ordines Angliæ in ſua Britannia teſtatur Cambden ubi ſupra. Et titulus Marchionis ſerius ad nos devenit, nec ante R. 2. tempora cuiquam delatus; ille enim Robertum Vere Oxoniæ comitem delicias ſuas primum Marchionem Dubliniæ deſignavit, merumque erat honoris nomen. Hæc ille. And before the reign of H. 6. there was not any Viſcount. Sic enim idem Author ubi ſupra aſſerit. Poſt comites vicecomites ordine ſequuntur, Viſcounts nos vocamus: hæc vetus officii ſed nova dignitatis appellatio, & H. 6. tempore apud nos primum audita. Hæc ille. Et dominus de Bello monte was the firſt Viſcount created by King H. 6. Vide Caſſianeum in gloria mundi, parte 4. conſid. 55. that this dignity of a Viſcount is of great antiquity in other Realms.

7 H.4.9. 31 Aſſ.30. 26 Aſſ.66. 27 Aſſ.52. 8 E.3.154.

Bracton lib.2.36. Item ſunt quædam ſervitia quæ dicuntur forinſeca, quamvis ſunt in charta de feoffamentis expreſſa & nominata, & quæ ideo dici poſſunt forinſeca, quia pertinent ad dominum regem, & non ad dominum capitalem, niſi cum in propria perſona profectus fuerit in ſervitio, vel niſi cum pro ſervitio ſuo ſatisfecerit domino regi, &c.

7 E.3.29. 11 H.4.7. F.N.B.28. b. & 83. g. 3 H.4.16. 28 H.6.1. b. 39 H.6.38. 6 R.2. protection 46. 19 R.2. gard.165. 17 H.6. protect.56. 7 E.4.27. 11 H.4.7. 3 H.4.16.

¶ *Voyage Royal.* A Voyage Royal is not onely when the King himſelf goeth to War, as Littleton here ſaith, but alſo when his Lieutenant, or Deputy of his Lieutenant, goeth. And what ſhall be ſaid a Voyage Royal ſhall be adjudged in this caſe by the Judges of the Common Law as an incident to Eſcuage, and not by the Conſtable and Marſhall, or any other: & ſic de ſimilibus.

There is alſo another kind of Voyage Royal, viz. when one goeth with the Kings daughter beyond ſea to be married, &c. for ſuch a Voyage is for the good of the whole Realm, (for more profit for the Realm cannot be, then to make alliance with another Nation:) but of this Voyage Royal Littleton ſpeaketh not here, but onely of the Voyage Royal to War: ſo as there is a Voyage Royal of War, and a Voyage Royal of Peace and Amity. And it is to be obſerved, that he that holdeth by Caſtle-gard or Cornage, holdeth by Knights ſervice; and yet he ſhall pay no Eſcuage, becauſe he holdeth not to go with the King to War.

L. R. in Scac.47,48. 19 R.2. gard.95. 6 R.2. protection 46. 6 H.3. Avowry 242. Vide Rot. clauſ. 8 H.3. & Fin. 8 H.3. & parent. 9 H.3. multi ſolverunt ſcutagium pro exercit. in Walliam. memb.30. & ante. Clauſ. 6 H.3. memb. 3.

¶ *En Eſcoce.* In Scotiam: this is put but for an example, for if the tenure be to go in Walliam, Hiberniam, Vaſconiam, Pictaviam. &c. it is all one. See an ancient Record, Rot. de finibus Termino Mich.11 E.2. Sir Richard Rockeſly Knight did hold lands at Seaton by Serjeanty to be Vantrarius Regis, that is, to be the Kings fore-footman when the King went into Gaſcoigne, donec peruſus fuit pari ſolutarum precii 4 d. that is, until he had worn out a pair of ſhoes of the price of four pence. And this ſervice being admitted to be performed when the King went to Gaſcoigne to make war, is Knights ſervice.

¶ *Il que tient per un fee de ſervice de chivaler covient eſte ove le Roy per* 40 *jours.* But this is to be underſtood of a Tenant that holdeth of the King immediately, for every man is bound by his tenure to defend his Lord, and both he and his Lord the King and his Country; and therefore if the Lord goeth not, his Tenant is excuſed. But yet if the Tenant peradventure goeth with the King, it excuſeth all the means.

And it is to be obſerved, that for every pound of the ancient value of a Knights fee accounting twenty pound land, the Tenant muſt go with the King two dayes, which cometh juſt to 40 dayes for a whole Knights fee. By the ſtatute of Magna Charta it is provided, that Scutagium de exter' capiatur ſicut capi conſuevit tempore Hen. regis avi noſtri.

Magna Charta, cap.37. Fleta lib. cap.60.

Sect.

Sect. 96.

¶ MEs il appiert p les pleas & arguments faits en un bon plee ſur briefe de Detinue de un eſcript Obligatorie port per un H. Gray, T. 7 E. 3. que ne beſoigne a celuy q̃ tient per Eſcuage de aler ove le Roy luy meſm̃, ſil voile trover un auter perſon able pur luy, convenablement arrayé pur le guerre, de aler ove le Roy. Et ceo ſemble eſtre bon reaſon: car poit eſtre q̃ celuy que tient per tiels ſerbices eſt languiſhant, iſſinc q̃ il ne poit aler ne chivaucher. Et auxy un Abbe, ou auter home de Religion, ou feme ſole, q̃ tient per tiels ſerbices, ne doit en tiels cas aler en proper perſon. Et Sir W. Herle, adonque chiefe Juſtice de Common Bank, diſoit en tiel plee, que eſcuage ne ſerra graunt, mes lou le Roy alaſt luy meſme en ſon proper perſon. Et fuiſt demurre en judgment en meſme le plee, le quelles xl. jours ſerront accompts de le primer jour del mu-

But it appeareth by the Pleas and Arguments made in a Plea upon a Writ of Detinue of a writing Obligatorie brought by one *H. Gray*, *T.* 7 *E.* 3. that it is not needfull for him which holdeth by Eſcuage to go himſelf with the King, if he will find another able perſon for him, conveniently arrayed for the War, to go with the King. And this ſeemeth to be good reaſon: For it may be that he which holdeth by ſuch ſervices is languiſhing, ſo as he can neither go nor ride. And alſo an Abbot or other man of Religion, or a feme ſole, which hold by ſuch ſervices, ought not in ſuch caſe to go in proper perſon. And Sir *William Herle*, then Chief Juſtice of the Common Place, ſaid in this Plea, That Eſcuage ſhall not be granted, but where the King goes himſelf in his proper perſon. And it was demurred in judgment in the ſame Plea, whether the 40 dayes ſhould be accounted from the firſt day of

¶ TR. 7 E. 3. &c. This is the firſt Book at large that our Author hath cited: and it is to be obſerved, that this point is not debated in the ſaid Book, but onely it is there admitted; and yet is good authority in law, for our Author ſaith, that it appeareth by this Book. Now both by Littleton himſelf, and by the Book of 7 E. 3. it is apparent, that albeit the tenure is, that he which holdeth by a whole Knights fee ought to be with the King, &c. to do a corporall ſervice, yet he may find another able man to do it for him. T. 7 E. 3. fol. 29.

By the Statute of Magna Charta, cap. 20. it is provided, that no Knight that holdeth by Caſtle-gard ſhall be diſtreined to give money for the keeping of the Caſtle, ſi ipſe eam facere voluerit in propria perſona ſua, vel per alium probum hominem faciet, ſi ipſe eam facere non poſſit propter rationabilem cauſam.

Some have thought that he that holds by Eſcuage is taken by the equity of this ſtatute, that ſpeaketh onely of Caſtle-gard; but it is holden, that this ſtatute is but an affirmance of the Common Law. For where that Act ſaith (propter rationabilem cauſam) that reaſonable cauſe is referred to the Tenants own diſcretion and choice; and the cauſe is not material or iſſuable no more then in the caſe that Littleton here putteth, as hereafter appeareth. And I would adviſe our Student, that when he ſhall be enabled and armed to ſet upon the Year-Books, or Reports of Law, that he be furniſhed with all the whole courſe of the Law, that when he heareth a Caſe vouched and applied either in Weſtminſter Hall, (where it is neceſſary for him to be a diligent hearer and obſerver of caſes of Law) or at readings or other exerciſes of learning, he may find out

out and read the caſe ſo vouched; for that will both faſten it in his memory, and be to him as good as an Expoſition of that caſe: but that muſt not hinder his timely and orderly reading, which (all excuſes ſet apart) he muſt bind himſelf unto: for there be two things to be avoided by him, as enemies to learning, præpoſtera lectio, and præpropera praxis. But let us now hear what our Author will ſay.

ſter de hoſt le Roy, fait per les Commons, & per commandement le Roy, ou de la jour que le Roy primes entra en Eſcoce. Ideo Quære de hoc.

the muſter of the Kings hoſt, made by the Commons, and by the commandement of the King, or from the day that the King firſt entred into *Scotland*. Therefore inquire of this.

¶ *Et ceo ſemble bone reaſon*, &c. Here Littleton ſheweth three reaſons wherefore the Tenant ſhould not be conſtrained to do his ſervice in perſon.

Firſt, It may be the Tenant is ſick, ſo as he is neither able to go nor ride. And ever ſuch conſtruction muſt be made in matters concerning the defence of the Realm or common good, as the ſame may be effected and performed. To the former diſability may be added, where a Corporation aggregate of many, as Dean and Chapter, Mayor and Communalty, &c. or an Infant being a Purchaſer; for theſe alſo muſt find an able man. But it may be objected, that in theſe particular Caſes the Tenant might find a man, but not when he himſelf is able without all excuſe or impediment. To this it is anſwered, that Sapiens incipit à fine. And the end of this ſervice is for defence of the Realm, and ſo it be done by an able and ſufficient man, the end is effected.

Secondly, Seeing there are ſo many juſt excuſes of the Tenant, it were dangerous, and tending to the hindrance of the ſervice, if theſe excuſes ſhould be iſſuable. Multa in jure communi contra rationem diſputandi pro communi utilitate introducta ſunt.

Laſtly, both Littleton, and the Book in the ſeventh of Edward the third, giveth the Tenant power without any cauſe to be ſhewed to find an able and ſufficient man, and oftentimes Jura publica ex privato promiſcue decidi non debent.

¶ *Un Abbe ou auter home de religion.* Note, that if the King had given Lands to an Abbot and his Succeſſors to hold by Knights Service, this had been good, and the Abbot ſhould do Homage and find a man, &c. or pay Eſcuage: but there was no Wardſhip or Relief, or other incident belonging thereunto. And though the Law ſaith, that this was a Mortmaine, that is, that they held faſt their Inheritances; yet if the Abbot with the aſſent of his Covent had conveyed the land to a natural man and his heirs, now Wardſhip and Relief, and other incidents, belonged of common right to the Tenure. And ſo it is if the King give Lands to a Mayor and Communalty, and their Succeſſors, to be holden by Knights Service. In this caſe the Patentees (as hath been ſaid) ſhall do no Homage, neither ſhall there be any Wardſhip or Relief, onely they alſo ſhall find a man, &c. or pay Eſcuage. But if they convey over the lands to any natural man and his heirs, now Homage, Ward, Marriage, and Relief, and other Incidents, belong hereunto. And yet this poſſibility was remota potentia: but the reaſon hereof is, Ceſſante ratione legis, ceſſat ipſa lex, the reaſon of the immunity was in reſpect of the Body politique, which by the conveyance over ceaſeth: which is worthy of obſervation.

And it is to be obſerved, that every Biſhop in England hath a Barony, and that Barony is holden of the King in capite, and yet the King can neither have Wardſhip or Relief.

If two Joyntenants be of Land holden by Knights Service; if one goeth with the King, it ſufficeth for both, and both of them cannot be compelled to go; for by their Tenure one man is onely to go.

6 H. 3. Avowry 248. F.N.B. 83, 84. If the Tenant peravail goeth, it diſchargeth the Meine; for one Tenancy ſhall pay but one Eſcuage.

¶ *Un auter home de Religion.* Here this word (Religion) is taken largely, viz. not onely for regular, or dead perſons, as Abbots, Monks, or the like; but for ſecular perſons alſo, as Biſhops, Parſons, Vicars, and the like; for neither of them are bound to go in proper perſon. For nemo militans Deo implicet' ſecularibus negotiis.

¶ *Languiſhant.* So it may be ſaid of an Ideot, a madman, a leper, a man maimed, blind, deaf, of decrepit age, or the like.

¶ *Ou feme ſole.* Seeing that a feme ſole, that cannot perform Knights ſervice, may ſerve by deputy, it may be demanded wherefore an Heir male being within the age of 21 years

yeares may not ſerve alſo by Deputy, being not able to ſerve himſelf.

To this it is anſwered, that in caſes of Minority all is one to both ſexes, viz. if the heire male be at the death of the Anceſtor under the age of one and twenty, or the heir female under the age of 14. they can make no deputy, but the Lord ſhall have wardſhip as an incident to the Tenure: therefore Littleton is here to be underſtood of feme ſole of full age, and ſeiſed of land holden by Knights Service either by purchaſe or deſcent.

¶ *Convenablement array pur le guerre.* So as here are four things to be obſerved.

Firſt, (as hath been ſaid) that he may find another.

Secondly, that he that is found muſt be an able perſon.

Thirdly, he muſt be armed at the coſts and charge of the Tenant: and herein is to be noted, Quod non definitur in jure what manner of Armor the Souldier ſhall be arrayed with, for time, place and occaſion do alter the manner and kind of the Armor.

Fourthly, he muſt have ſuch Armor as ſhall be neceſſary, and ſo appointed in readineſs. Fleta lib. 1. cap. 42.

Ferdwit is a Saxon word, & ſignificat quietanciam murdri in exercitu. Warſcot is an old Engliſh word, and ſignifieth, liberum eſſe de oneribus armorum.

It is truly ſaid, Quod miles hæc tria curare debet; corpus ut validiſſimum & perniciſſimum habeat, arma apta ad ſubita imperia, cætera Deo & Imperatori curæ eſſe. Livius.

Sapiens non ſemper it uno gradu, ſed una via; non ſe mutat, ſed aptat. Qui ſecundos optat eventus, dimicet arte, non caſu. In omni conflictu non tam prodeſt multitudo quam virtus. Vegetius.

Eſt optimi ducis ſcire & vincere, & cedere prudenter tempori. Multum poteſt in rebus humanis Occaſio, plurimum in bellicis. Polybius.

Quid tam neceſſarium eſt quam tenere ſemper arma quibus tectus eſſe poſſis? But I will take my leave of theſe excellent Authors of Art Military, and refer the Reader to thoſe that profeſs the ſame, and will return to Littleton. Vegetius.

¶ *Muſter.* I find this word in the Statute of 18 H. 6. cap. 19. and the ancient Military Order is worthy of obſervation: for before and long after that ſtatute, when the King was to be ſerved with Souldiers for his warr, a Knight or Eſquire of the Country that had Revenues, Farmors and Tenants, would covenant with the King by Indenture inrolled in the Exchequer to ſerve the King for ſuch a term with ſo many men (ſpecially named in a Liſt) in his warr, &c. An excellent inſtitution, that they ſhould ſerve under him whom they knew and honoured, and with whom they muſt live at their return. Theſe men being muſtered before the Kings Commiſſioners, and receiving any part of their wages, and their names ſo recorded, if they after departed from their Captain within the Term, contrary to the form of that Statute, it was Felony. But now that ſtatute is of no force, becauſe that ancient and excellent form of military courſe is altogether antiquated: but latter Statutes have provided for that miſchief. Lib. 6. fol. 27. the Souldiers caſe.

To muſter is to make a ſhew of Souldiers well armed and trained before the Kings Commiſſioners in ſome open field, ubi ſe oſtendentes præludunt prælio. In Latine it is cenſere, ſeu luſtrare exercitum.

By the Law before the Conqueſt, Muſters and ſhewing of Armour ſhould be Uno & eodem die per univerſum Regnum, ne aliqui poſſint arma familiaribus & notis accommodare, nec ipſi illa mutuo accipere, ac juſtitiam Domini Regis defraudare, & Dominum Regem & Regnum offendere. Lamb. fol. 135. b.

Concerning the point of Law demurred in judgment in the ſeventh of Edward the third, here mentioned by our Author; The Law accounteth the beginning of the forty dayes after the King entreth into the forraign Nation, for then the warr beginneth; and till he come there, he and his Hoſt are ſaid to go towards the warr, and no military ſervice is to be done till the King and his Hoſt come thither.

¶ *Sir William Herle.* A famous Lawyer, conſtituted Chief Juſtice of the Common Pleas by Letters Patents, dated 2. die Martii anno 5 E. 3. It appeareth by Littleton, and by the Record, that he was a Knight, againſt the conceit of thoſe that think, that the chief Juſtices of the Court of the Common Pleas were not Knighted till long after.

Our Student ſhall obſerve that the knowledge of the Law is like a deep Well, out of which each man draweth according to the ſtrength of his underſtanding. He that reacheth deepeſt, he ſeeth the amiable and admirable ſecrets of the Law; wherein I aſſure you the Sages of the Law in former times (whereof Sir William Herle was a principal one) have had the deepeſt reach. And as the bucket in the depth is eaſily drawn to the uppermoſt part of the water, (for Nullum elementum in ſuo proprio loco eſt grave) but take it from the water, it cannot be drawn up but with great difficulty: So albeit beginnings of this ſtudy ſeem difficult, yet when the Profeſſor of the Law can dive into the depth of it (in delightfull, eaſy, and without any heavy burthen, ſo long as he keeps himſelf in his own proper element.

¶ *Juſtice.*

Glanvil lib.2. cap.6, &c.

¶ *Juſtice.* In Glanvil he is called Juſtitia in ipſo abſtracto, as it were Juſtice it ſelf; which appellation remains ſtill in Engliſh and French, to put them in mind of their duties and functions. But now in legal Latine they are called Juſticiarii, tanquam juſti in concreto; and they are called Juſticiarii de Banco, &c. and never Judices de Banco, &c.

¶ *Common Banke.* Banke is a Saxon word, and ſignifieth a Bench or high ſeat, or a Tribunall, and is properly applied to the Juſtices of the Court of Common Pleas, becauſe the Juſtices of that Court ſit there as in a certain place: for all Writs returnable into that Court are Coram Juſticiariis noſtris apud Weſtmon. or any other certain place where the Court ſit; and legal Records term them Juſticiarii de Banco. But Writs returnable into the Court called the Kings Bench are Coram nobis (i. Rege) ubicunque fuerimus in Anglia. And all judiciall Records there are ſtiled Coram Rege. But for diſtinction ſake it is called the Kings Bench, both becauſe the Records of that Court are ſtiled (as hath been ſaid) Coram Rege, and becauſe Kings in former times have often perſonally ſat there. For the antiquity of the Court of Common Pleas, they erre that hold, that before the ſtatute of Magna Charta there was no Court of Common Pleas, but it had its Creation by or after that Charter: for the learned know, that in the ſix and twentieth year of Edward the third, the Abbot of B. in a Writ of Aſſize brought before the Juſtices in Eire claimed Conuſance, and to have Writs of Aſſiſe, and other original Writs out of the Kings Court, by preſcription, time out of mind of man, in the reigns of Saint Edmond and Saint Edward the Confeſſor, before the Conqueſt. And on the behalf of the Abbot were ſhewed divers allowances thereof in former times in the Kings Courts, and that King Henry the firſt confirmed their uſages, and that they ſhould have Conuſance of Pleas, ſo that the Juſtices of the one Bench, or the other, ſhould not intermeddle. And the ſtatute of Magna Charta ereæeth no Court, but giveth direction for the proper juriſdiction thereof, in theſe words, Communia placita non ſequantur Curiam noſtram, ſed teneantur in aliquo certo loco. And properly the ſtatute ſaith, non ſequantur; for that the Kings Bench did in thoſe dayes follow the King ubicunque fuerit in Anglia, and therefore enacteth that Common Pleas ſhould be holden in a Court reſident in a certain place. In the next Chapter of Magna Charta (made at one and the ſame time) it is provided; Et ea quæ per eoſdem (s. Juſticiarios itinerantes) propter difficultatem aliquorum articulorum terminari non poſſunt, referantur ad Juſticiarios noſtros de Banco, & ibi terminentur. And in the next to that, Aſſiſæ de ultima præſentatione ſemper capiantur coram Juſticiariis de Banco, & ibi terminentur. Therefore it manifeſtly appeareth that at the making of the ſtatute of Magna Charta there were Juſticiarii de Banco, which all men confeſſe to be the Court of Common Pleas. And therefore that Court was not erected by or after that Statute. For the Authority of this Court, it is evident by that which hath been ſaid, that it hath juriſdiction of all Common Pleas. But let us return to Littleton.

26 Aſſ. p.24. 4 E.3. fol.19.
Bracton lib.3. fol. 105. b.
Britton fol.1. & 2.
Fleta lib.2. cap.2.
Mirror cap.5. ſect.1.
Forteſcue cap.51.
See in the preface to the third part of my Reports.

Mirror cap.5. ſect.2.
Fleta lib.2. cap. 54.

¶ *Demurre en judgement.* A Demurrer cometh of the Latine word Demorari, to abide; and therefore he which demurreth in Law, is ſaid he that abideth in Law, Moratur, or Demoratur in lege. Whenſoever the Counſel learned of the party is of opinion, that the Count or Plea of the adverſe party is inſufficient in Law, then he demurreth or abideth in Law, and referreth the ſame to the judgment of the Court. And therefore well ſaith Littleton here, demurre en judgement: the words of a Demurrer being, Quia narratio, &c. materiaque in eadem contenta minus ſufficiens in lege exiſtit, &c. and ſo of a Plea, Quia placitum, &c. materiaque in eodem contenta minus ſufficiens in lege exiſtit, &c. unde pro defectu ſufficientis narrationis ſive placiti, &c. petit judicium, &c. But if the Plea be ſufficient in Law, and the matter of fact be falſe, then the adverſe Party taketh iſſue thereupon, and that is tried by a Jury; for matters in Law are decided by the Judges, and matters in fact by Juries, as elſewhere is ſaid more at large.

Now as there is no iſſue upon the fact, but when it is joyned betwixt the parties; ſo there is no Demurrer in Law but when it is joyned: and therefore when a Demurrer is offered by the one party, as is aforeſaid, the adverſe party joyned with him (for example) ſaith, Quod Placitum prædictum, &c. materiaque in eodem contenta bonum & ſufficiens in lege exiſtunt, &c. & petit judicium: and thereupon the Demurrer is ſaid to be joyned, and then the Caſe is argued by Counſell learned of both ſides: and if the points be difficult, then it is argued openly by the Judges of that Court; and if they or the greater part concurr in opinion, accordingly judgment is given; and if the Court be equally divided, or conceive great doubt of the Caſe, then may they adjorn it into the Exchequer Chamber, where the Caſe ſhall be argued by all the Judges of England, where if the Judges ſhall be equally divided, then (if none of them change their opinion) it ſhall be decided at the next Parliament by a Prelate, two Earles, and two Barons, which ſhall have power and commiſſion of the King in that behalf, and by advice of themſelves, the Chancellor, Treaſurer, the Juſtices of the

Vide Bract. lib.5. fol.352. b.

14 E.3. cap.5. ſtatut.1.

the

the one Bench and the other, and other of the Kings Counſel, as many and ſuch as ſhall ſeem convenient, ſhall make a good judgment, &c. And if the difficulty be ſo great as they cannot determine it, then it ſhall be determined by the Lords of the upper Houſe of Parliament. See the Statute, for it extends not onely to the caſe aboveſaid, but alſo where judgments are delayed in the Chancery, Kings Bench, Common Bench, and the Exchequer, the Juſtices aſſigned, and other Juſtices of Oyer and Terminer, ſometime by difficulty, ſometime by divers opinions of Juſtices, and ſometime for other cauſes. (a) Before which Statute, if judgments were not given by reaſon of difficulty, the doubt was decided at the next Parliament, (which then was to be holden once every year at the leaſt.) (b) Si autem talia nunquam prius evenerint, & obſcurum & difficile ſit eorum judicium, tunc ponatur judicium in reſpectum uſque ad magnam curiam, ut ibi per conſilium curiæ terminetur. But hereof thus much ſhall ſuffice. (c) He that demurreth in Law confeſſeth all ſuch matters of fact as are well and ſufficiently pleaded. If there be a demurrer for part, and an iſſue for part, the more orderly courſe is to give judgment upon the demurrer firſt, but yet it is in the diſcretion of the Court to try the iſſue firſt if they will. After demurrer joyned in any Court of Record, the Judges ſhall give judgment according as the very right of the cauſe and matter in Law ſhall appear, without regarding any want of form in any Writ, Return, Plaint, Declaration, or other pleading, Proces, or courſe of proceeding, except thoſe onely which the party demurring ſhall ſpecially and particularly ſet down and expreſſe in his demurrer. (a) Now what is ſubſtance and what is form, you ſhall read in my Reports.

And in ſome caſes a man ſhall alleage ſpecial matter, and conclude with a Demurrer. (b) As in an action of treſpaſſe brought by J. S. for the taking of his horſe; the defendant pleads that he himſelf was poſſeſſed of the horſe untill he was by one J. S. diſpoſſeſſed, who gave him to the plaintiff, &c. the plaintiff ſaith that J. S. named in the barre, and J. S. the plaintiff, were all one perſon, and not diders, and to the plea pleaded by the Defendant in the manner he demurred in Law; and the Court did hold the plea and demurrer good, for without the matter alleaged he could not demurr. Now as there may be a demurrer upon counts and pleas, ſo there may be of Aid prier, Voucher, Receit, waging of Law, and the like. (c) By that which hath been ſaid, it appeareth, that there is a general demurrer, that is, ſhewing no cauſe, and a ſpecial demurrer, which ſheweth the cauſe of his demurrer. Alſo by that which hath been ſaid, there is a demurrer upon pleading, &c. and there is alſo a demurrer upon evidence. (d) As if the plaintiff in evidence ſhew any matter of Record, or Deeds, or Writings, or any ſentence in the Eccleſiaſtical Court, or other matter of evidence by teſtimony of witneſſes, or otherwiſe, whereupon doubt in Law ariſeth, and the defendant offer to demurr in Law thereupon, the plaintiff cannot refuſe to joyn in demurrer no more then in a demurrer upon a count, replication, &c. and ſo è converſo, may the plaintiff demurr in Law upon the evidence of the Defendant.

(e) But if evidence for the King in an Information, or any other ſuit be given, & the Defendant offer to demurr in Law upon the Evidence, the Kings Counſel ſhall not be inforced to joyn in Demurrer: but, in that caſe, the Court may direct the Jury to find the ſpecial matter.

¶ *En judgment.* For the ſignification of this word, Vide ſect. 366.

Rot. Parlia. 14 E. 3. nu. 31. a proceeding in Sir John Stanions caſe upon difficulty in the Court of Common Pleas.
Vide Britt. fol. 41.
21 E. 3. 37, 38.
39 E. 3. fol. 1. 21. 35. 40 E. 3 34. 13 H. 4. 3, 4.
(a) 4 E. 3. cap. 14.
(b) Bracton lib. 1. cap. 2. nu. 7. Brit. fol. 4. 1 E. 3. 7, 8. 2 E. 3 6, 7.
(c) 17 E. 3. 50. b. 47 E. 3. 13, 14. 5 H. 7. 1. 13 E. 4. 7. b. Pl. Com. 85. 4 H. 11. 172. 48 E. 3. 15. 2 R. 2. inqueſt 2. 38 E. 3. 25. 11 H. 4. 5. 75. 3 E. 4. 2.
(a) Lib. 3. fol. 57. Linc. Coll. caſe. Lib. 5. fol. 74. Wymkes caſe. Lib. 10. fol. 88. uſque 98. Doctor Leyfields caſe.
(b) 13 E. 4. 7. 31 E. 3. eſtoppel 244. 33 H. 6. 9, 10. 22 E. 4. 30. 1 H. 7. 21.
(c) 14 H. 4. 31. 37 H. 6. 6.
(d) Lib. 5. fol. 104. 2. Bakers caſe.
(e) 38 H. 8. Dyer 53.

Sect. 97.

¶ ET apres tiel voyage royall en Eſcoce, il eſt communement dit, que p authoritie de Parliament leſcuage ſerra aſſeſſe & mis en certeine, s. certeine ſume dargent, quant chelcun que tient per entire fee de ſervice de chivaler, ql ne fuit

And after ſuch a Voyage royall into Scotland, it is commonly ſaid, That by authority of Parliament the eſcuage ſhall be aſſeſſed and put in certain, s. a certain ſumme of money, how much every one which holdeth by a whole Knights fee,

¶ *Apres voyage royall*, &c. *il eſt communement dit, que per Authoritie de Parliament eſcuage ſerra aſſeſſe.* Note, here is a ſecret of Law included, that albeit Eſcuage incertain be due by Tenure, yet becauſe the aſſeſſment thereof concerned ſo many and ſo great a number of the ſubjects of the Realm, it could not be aſſeſſed by the King or any other but by Parliament:

(x) and

(a) and this was by the Common Law.

(b) No Eſcuage was aſſeſſed by Parliament ſince the Reign of Edward the ſecond, and in the eighth year of his Reign Eſcuage was aſſeſſed.

(a) 13 H.4.5.

(b) 8 H.3. Rot. Clauſ. & Rot. finium memb.30. & ante.

If the Tenant goeth with the King, and dieth in exercitu, in the Hoſt or Army, he is excuſed by Law, and no Eſcuage ſhall be demanded.

Staff. p. 14 Ed. de banco.

And it is to be obſerved, that if he that holds of the King by Eſcuage goeth, or findeth another to go for him with the King, &c. then he ſhall have Eſcuage of his Tenants that hold of him by ſuch ſervice, which muſt be aſſeſſed by Parliament.

F.N.B. 84.

Bract. lib.2.36. 2.

But if the Kings Tenant goeth not with the King, then he ſhall pay for his default Eſcuage, and ſhall have no Eſcuage of his Tenants.

F.N.B. 84.

Richard the ſecond making a voyage Royal into Scotland, at the petition of his Commons, pardoned the payment of Eſcuage.

Ro. Parl.R.2. num.40.

per luy meſme, ne per un auter pur luy, ove le Roy, payera a ſon Seignior de que il tient la Terre per eſcuage. Sicome mittomus que il fuit ordaine per authoritie de la Parliament, que cheſcun que tient per entire fee ô Service de chivaler, que ne fuit ove le Roy, payera a ſon Seignior 40. S. donque celuy que tient per moietie dun fee de chivaler ne payera a ſon Seignior forſque xx. S. & celuy que tient p la quart part de fee de chivaler ne payera forſque x. S. & ſic que pluis, pluis; & que meins, meins.

who was neither by himſelf, nor by any other, with the King, ſhall pay to his Lord of whom he holds his Land by Eſcuage. As put the caſe that it was ordained by the authority of the Parliament, That every one which holdeth by a whole Knights fee, who was not with the King, ſhall pay to his Lord forty ſhillings; then he which holdeth by the moiety of a Knights fee ſhall pay to his Lord but twenty ſhillings; and he which holdeth by the fourth part of a Knights fee ſhall pay but x. s. and he which hath more, more; and which leſſe, leſſe.

Sect.98.

Vide ſect.120.

¶ *Aſcuns teignont per cuſtome*, &c. Nota, that Eſcuage is directed by cuſtoms.

¶ AScuns teignont per la cuſtome, que ſi leſcuage courge per authoritie de Parliament a aſcun ſũme de money, & ils ne paieront forſque la moietie de ceos; aſcuns teignõt & ils ne paieront forſque le quart part de ceo. Mes pur ceo que leſcuage & ils paierõt eſt non certain, pur ceo & neſt certain coment le Parliament

And ſome hold by the Cuſtome, that if Eſcuage be aſſeſſed by authority of Parliament at any ſumme of money, that they ſhall pay but the moiety of that ſumme, and ſome but the fourth part of that ſumme. But becauſe the Eſcuage that they ſhould pay is uncertain; for that it is not certain how the Parliament will aſſeſſe the Eſcuage, they hold by Knights-ſer-

aſſeſſera

19 E.2. tit. Avow. 215. 26 Aſſ.65. 30 E.3.23. b. Lib.4.fol.88. in Luttrels caſe.

¶ *Mes autrement eſt de Eſcuage certaine.*

Here it appeareth that Eſcuage is twofold, viz. Eſcuage incertain, whereof Littleton here ſpeaks, and Eſcuage certain. Quemadmodum incertitudo ſcutagii facit ſervitium militare, ita certitudo ſcu-

aſſeſſera leſcuage eux teignont per ſervice de Chivaler. Mes auterment eſt de leſcuage certaine; de q̄ ſerra parle en le tenure de Socage.

vice. But otherwiſe it is of Eſcuage certain; of which ſhall be ſpoken in the Tenure of Socage.

tagii facit Socagium. But more of this in the Chapter of Socage, Sect. 120.

¶ *Per Parliament.* Of the Antiquity and Authority of this Court ſee Sect. 164.

Sect. 99.

¶ ET ſi hõe parle generalment deſcuage, il ſerra entendue p̄ le common parlance deſcuage non certaine, que eſt Service de Chivaler: & tiel eſcuage trait a luy homage, & homage trait a luy Fealtie; car Fealtie eſt incident a cheſcun manner de Service, forſque a le Tenure en Frankalmoigne, come ſerra dit apres en le Tenure de Frankalmoigne. Et iſſint il que tient per Eſcuage tient p̄ homage, Fealty & Eſcuage.

AND if one ſpeak generally of Eſcuage, it ſhall be intended by the common ſpeech of Eſcuage incertain, which is Knights Service: And ſuch Eſcuage draweth to it Homage, and Homage draweth to it Fealty; for Fealty is incident to every manner of Service, unleſs it be to the Tenure in Frankalmoigne, as ſhall be ſaid afterward in the Tenure of Frankalmoigne. And ſo he which holdeth by Eſcuage holds by Homage, Fealty and Eſcuage.

¶ *ET ſi home parle generalment deſcuage, il ſerra intend per le common parlance deſcuage non certain.*

Verba æquivoca & in dubio poſita intelliguntur in digniori & potentiori ſenſu. Tenure in capite ex vi termini is a Tenure in Groſſe, and it may be holden of a Subject; but being ſpoken generally, it is ſecundum excellentiam intended of the King, for he is Caput Reipublicæ.

Entendments en Ley, Sect. 100, 110, 367, 377, 393, 406, 462, 463. 5 E. 2. Reſ. 165. 20 H. 6. 23. 21 H. 6. 8. 37 H. 29. 13 H. 4. 4. 6 El. Dier 236. 10 E. 4. 11. 32 E. 3. Gard. 41.

Brit. fol. 163.

¶ *Et tiel Eſcuage trait a luy Homage, & Homage trait a luy Fealtie; car Fealtie eſt incident a cheſcun manner de ſervice, forſque a Tenure en Frankalmoigne.*

40 E. 3. 22. 8 H. 7. 4.

Sect. 100.

This is gathered by the effects of their tenure, for eſſences are found out by properties, fountains by rivers, and cauſes by effects: for amongſt others, the Lords ſhall have Eſcuage of their Tenants, &c. as it followeth.

¶ ET eſt aſcavoire, que quant eſcuage eſt tielment aſſeſſe per authoritie de Parliament, cheſcun Seignior, de que la terre eſt tenus per Eſcuage, avera leſcuage iſſint aſſeſſe per Parliament, pur ceo que il eſt in-

AND it is to be underſtood, that when Eſcuage is ſo aſſeſſed by authority of Parliament, every Lord, of whom the Land is holden by Eſcuage, ſhall have the Eſcuage ſo aſſeſſed by Parliament, becauſe it is intended by the Law, That at

tendus p la Ley, q̃ al cõmencemẽt tiels teneñts fuer dones p les Sñrs a les tenants, de tener per tielx Services, a defender lour Sñrs auxy bien come le Roy, & mitter en quiet lour Sñrs & le Roy de les Scotes avantdits.

the beginning ſuch Tenements were given by the Lords to the Tenants, to hold by ſuch Services, to defend their Lords as well as the King, and to put in quiet their Lords and the King from the Scots aforeſaid.

Sect. 101.

F.N.B. 84. Regiſter 88. de Scutagio habendo.

¶ *Les Seigniors averont leſcuage, &c.* This is evident.

¶ *Briefe le Roy.* This cometh of the Latine word Breve.

Fitzh. in his Preface to his N. B. ſaith of them, that they be thoſe foundations whereupon the whole Law doth depend.

(a) Bracton lib. 5. fol. 413. Fleta lib. 2. cap. 12. Britton fol. 122, 227.

(a) Bracton deſcribeth a Writ thus, Breve quidem, cum ſit formatum ad ſimilitudinem regulæ juris, quia breviter & paucis verbis intentionem proferentis exponit & explanat, ſicut regula juris rem quæ eſt breviter enarrat; non tamen ita breve eſſe debeat quin rationem & vim intentionis contineat.

Of Writs ſome be original, Brevia originalia, and ſome be judicial, Brevia judicialia.

Alſo of Originals, quædam ſunt formata ſub ſuis caſibus, & de curſu, & de communi conſilio totius regni conceſſa & approbata, quæ quidem nullatenus mutari poterint abſque conſenſu & voluntate eorum; & quædam ſunt Magiſtralia, & ſæpe variantur ſecundum varietatem caſuum, factorum, & querelarum; as for example, Actions upon the caſe, which vary according to the variety of every mans caſe, and the like: and theſe being not of courſe, the maſters being learned men did make. Item brevium originalium alia ſunt realia, alia perſonalia, alia mixta. Item brevium originalium alia ſunt patentia ſive aperta, & alia clauſa. Certain it is, that the original Writs are ſo artificially and briefly compiled, as there is nothing redundant or wanting in them; of which an honourable Secretary of State once ſaid, that it was not poſſible to comprehend ſo much matter ſo perſpicuouſly in fewer words. Of all theſe kinds of Writs you ſhall read plentifully in the Regiſter, whereof Littleton maketh mention in this place, and alſo in Fitz. N.B.

Bracton ubi ſupra. Britton ubi ſupra. Regiſt. 88. F.N.B. 84.

¶ *Sicome appiert per le Regiſter.* Regiſter is the name of a moſt ancient Book, and of great authority in Law, containing all the original Writs of the Common Law; of which Book ſee more in the Preface to the ninth part of my Reports: it containeth alſo Brevia judicialia, quæ ſæpius variantur ſecundum varietatem placitorum proponentis & reſpondentis.

F.N.B. 84.

Alſo it appeareth by the Regiſter that the King ſhall have Eſcuage of his Tenants which hold of him as of a Manor which he hath in ward, or by reaſon of a vacation of a Biſhoprick.

And ſo ſhall a common perſon, if he hath an eſtate for life or for years of a Seigniory.

¶ ET pur ceo que tiels teneñts devendront primes des Seigniors, il eſt reaſon q̃ ils averont leſcuage de lour Tenants. Et les Seigniors en tiel caſe purront diſtreiñ pur leſcuage iſſint aſſeſſe, ou ils en aſcuns caſes purront aũ bñe le Roy, direct as Viſcõts de ñ les Counties, &c. de levier tiel Eſcuage pur eux, ſicome appiert p le Regiſter. Mes ô tiels Tenants queux teignont per Eſcuage de Roy, qux ne fueront oue le Roy en Eſcoce, le Roy meſme avera leſcuage.

AND becauſe ſuch Tenements came firſt from the Lords, it is reaſon that they ſhould have the Eſcuage of their Tenants. And the Lords in ſuch caſe may diſtrein for the Eſcuage ſo aſſeſſed, or they in ſome caſes may have the Kings Writ, directed to the Sheriffs of the ſame Counties, &c. to levy ſuch Eſcuage for them, as it appeareth by the Regiſter. But of ſuch Tenants as hold of the King by Eſcuage, which were not with the King in *Scotland*, the King himſelf ſhall have the Eſcuage.

Sect.

Sect. 102.

¶ Item, en tiel caſe avantdit, lou le Roy face un voyage royall en Eſcoce, q̄ leſcuage eſt aſſeſſe per Parliament, ſi le Sr̄ diſtreine ſon tenant que tient de luy per ſervice dentier Fē de Chivaler pur leſcuage iſſint aſſeſſe, &c. q̄ le tenant plede, q̄ voit averrer que il fuit ove le Roy en Eſcoce, &c. per xl. jours, q̄ le Seignior voit averrer le contraries il eſt dit, que il ſerra trie per le certificat del Marſhall del Hoſt le Roy en eſcript ſouth ſ̄ ſeale, q̄ ſerra mis a les Juſtices.

ITem, in ſuch caſe aforeſaid, where the King maketh a voyage royall into *Scotland*, and the Eſcuage is aſſeſſed by Parliament, if the Lord diſtrain his Tenant that holdeth of him by ſervice of a whole Knights Fee for the Eſcuage ſo aſſeſſed, &c. and the Tenant pleadeth, and will aver that he was with the King in *Scotland*, &c. by 40. dayes, and the Lord will averre the contrary; it is ſaid, that it ſhall be tried by the Certificate of the Marſhall of the Kings Hoſt in writing under his Seal, which ſhall be ſent to the Juſtices.

¶ *ET voit averrer que il fuit ove le Roy en Eſcoce per* 40. *jours, &c.* (a) *Il eſt dit, que il ſerra trie per le certificat del Marſhall.* This is a triall appointed by the Law, ne Curia Regis deficeret in Juſtitia exhibenda. (a) 2 E.4.11. 4 E.4.10. 21 E.4.10. F.N.B.85. 11 H.7.5. Lib.9. fol.32. Caſe de Strat. Marc.

(b) Herewith agreeth the Regiſter, where the Marſhall is called Conſtabularius exercitus noſtri. (b) Regiſt. 88. F.N.B.84. 2 E.4.1. 4 E.4.10. 9 H.4.3. 11 H.7.5. 21 H.6.30. 33 H.6.1.45.

¶ *Marſhall del hoſt le Roy.* Mareſchallus exercitus; in Saxon, Mariſchalc, i. Equitum magiſter. This word Marſhall is either deriued of Mars; or of Marc an Horſe, and ſchale, which ſignifieth in the Saxon Tongue a Maſter or Governor. (c) In the Laws before the Conqueſt it is ſaid, Mareſchalli exercitus ſeu Ductores exercitus Heretoches per Anglos vocabantur: illi ordinabant acies denſiſſimas in prœliis, & alas conſtituebant prout decuit, & prout ei melius viſum fuerit ad honorem Coronæ & ad utilitatem Regni. (d) And here it is to be obſerved, that his Certificate in this caſe is a trial in Law. I read of ſix kinds of Certificates allowed for trials by the Common Law: The firſt whereof Littleton here ſpeaketh of, in time of War out of the Realm. 2. In time of peace out of the Realm: (e) As if it be alledged in avoidance of an Outlawry, that the Defendant was in priſon at Burdeaux in the ſervice of the Mayor of Burdeaux, it ſhall be tried by the Certificate of the Mayor of Burdeaux. 3. For matters within the Realm (f) the cuſtom of London ſhall be certified by the Mayor and Aldermen by the mouth of the Recorder. 4. By Certificate of the Sheriff upon a Writ to him directed, (g) in caſe of priviledge, if one be a Citizen or a Forreigner. 5. Trial of Records by Certificate of the Judges in whoſe cuſtody they are by Law. All theſe be in temporal cauſes. 6. In cauſes Eccleſiaſtical, as loyalty of Marriage, generall baſtardy, excommengement, profeſſion. Theſe and the like are regularly to be tried by the Certificate of the Ordinary. (c) Lamb. fol. 136. (d) 2 E.4. 1.b. 4 E.4.10. 23 E.4.47. F.N.B.85. (e) 4 E. 4.10. (f) 5 E.4.30. 21 E.4.16. (g) 10 H.6.10.

And there be divers other Trials allowed by the Common Law then by a Jury of twelve men, which you may read at large in the ninth Book of my Reports, fol.30.31, &c. in the caſe of the Abbot of Strata Marcella, which are as plainly ſet down there as they can be here: and in this caſe if the trial ſhould not be by Certificate, it ſhould want trial, which ſhould be inconvenient. Only in this place I will add ſomething of a forreign Trial, which I find not in any of the Treatiſes lately publiſhed, againſt ſingle Combats, becauſe it may deterr men from that ungodly and unlawful kind of revenge, whereupon many murders have enſued, and prevent all hope of impunity for default of trial in that caſe.

If a Subject of the King be killed by another of his Subjects out of England in any forreign Countrey, the wife or he that is heir of the dead may have an appeal for this murther or homicide before the Conſtable and the Marſhal, whoſe ſentence is upon teſtimony of Witneſſes or Combat. And accordingly where a Subject of the King was ſlain in Scotland by others of the Stat. de 1 H.4. cap.14. 13 H. 4. fol.5. Vide Rot. Parliam. 8 H.6. nu.38. Granſ. pl. Cor. fo.63.

Kings Subjects, the wife of the dead had her appeal therefore before the Conſtable and the Marſhal. And ſo it was (*) reſolved in the Reign of Queen Elizabeth in the caſe of Sir Francis Drake, who ſtrook off the head of Dowtie in partibus tranſmarinis, that his brother and heir might have an Appeal. Sed Regina noluit conſtituere Conſtabulârium Angliæ, &c. & ideo dormivit appellum.

(*) Anno 25 Eliz.

If a man be mortally wounded in France, and dieth thereof in England, it is ſaid that an Appeal doth lie upon the ſaid Statute, for it is not puniſhable by the Common Law; and the proceeding there (as hath been ſaid) is upon witneſſes or combate, and not by Jury; and the mortal wound was given out of the Realm.

CHAP. 4. *Sect.* 103.

Knights Service.

¶ *Service de Chivaler.* Nota, it appeareth by (a) the Regiſter, that it is (b) ſaid unum feodum militis, and not feodum unius militis, as it was ſaid (c) by ſome of old, and ſo duo feoda militis, & c. & (d) ſometime theſe Fees are called feoda militaria. Our Author having before treated of Homage, Fealty, & Eſcuage, now cometh to Knights Service itſelf. In Domeſday it is thus recorded, Epiſcop. Baiocenſis ille qui tenet de Modardo reddit ei 50. s. & ſervitium unius militis.

(a) Glanvil lib. 7. cap. 10.

(b) Regiſt. 2. 30 E. 3. 24.

(c) Glanvil lib. 7. cap. 14.

(d) Glanvil. lib. 7. c. 9, &c. Fleta lib. 1. fol. 8. Bracton lib. fo. 85. Britton fol. 162. & fol. 28. & 95. Ockam in diverſis locis. Mirror cap. 1. ſect. 3. Jud. Diton.

¶ *Chivaler.* i. Eques. Knight is a Saxon word, and by them written, Cnite. Chivaler taketh his name from the Horſe, becauſe they always ſerved in Wars on Horſeback. The Latines calling them Equites; the Spaniards, Cavalleroes; the Frenchmen, Chivaliers; the Italians, Cavallieri; and the Germans, Reiters: all from the Horſe. It is neceſſary to be ſeen by what names this Service of a Knight is called. It is called (c) Servitium forinſecum, quia pertinet ad Dominum Regem, & non ad capitalem Dominum, niſi cum in propria perſona profectus fuerit in ſervitio, & niſi cum pro ſervitio ſuo ſatisfecerit Domino Regi, &c. Ideo forinſecum dici poteſt, quia ſit & capitur foris, ſive extra ſervitium quod ſit

(e) Brack. lib. 2. fo. 36, 37. Britton fol. 164, 165. Fleta lib. 3. cap. 14. 19 E. 2. Avowry 224. 26 Aſſ. 65. 31 Aſſ. 30. 30 E. 3. 23. 8 E. 3. 67. 7 H. 4. 19.

¶ TEnure p homage, Fealtie, Eſcuage, eſt a tener p ſervice de chiuler, & trait a luy garde, mariage, & reliefe. Car quant tiel tenant morust, & ſon heire male eſt deins lage de 21. ans, le Seignior aũa la terre tenus de luy tanque al age del heire de 21. ans; le quel eſt appel pleine age, pur ceo que tiel home, per intendement del ley, neſt pas able de faire tiel ſervice de Chivaler devant lage de 21 ans. Et auxi ſi tiel heire ne ſoit marie al temps de mort de tiel Auncеſtor, donque le Seignior avera le garde & le mariage de luy. Mes ſi tiel Tenant devie, ſon heire female eſteant dage de 14. ans, ou de plus, donque le Seignior

TEnure by Homage, Fealtie and Eſcuage, is to hold by Knights Service, and it draweth to it Ward, Marriage, and Relief. For when ſuch Tenant dieth, and his heir male be within the age of 21. years, the Lord ſhall have the Land holden of him untill the age of the heir of 21. years; the which is called full age, becauſe ſuch heir, by intendment of the Law, is not able to doe ſuch Knights Service before his age of 21. years. And alſo if ſuch heir be not married at the time of the death of his Anceſtor, then the Lord ſhall have the Wardſhip and Marriage of him. But if ſuch Tenant dieth, his heir female being of the age of 14. years, or more, then the Lord

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navera my le garde del terre, ne de corps, pur ceo que feme de tiel age poit aver Baron able de faire Service de chivaler. Mes ſi tiel heire female ſoit deins lage de 14. ans, & nient marie al temps de la mort ſon Aunceſtor, donque le Seignior avera le garde de la terre tenus de luy, tanque al age de tiel heire female de 16. ans: pur ceo q̄ il eſt done per le Statute de Weſtm̄. 1. Cap. 22. que per 2. ans procheine enſuant les dits 14. ans, le Seignior poit tender cōvenable mariage ſauns diſparagement a tiel heire female. Et ſi le Seignior deins les dits 2. ans ne luy tend̄ tiel mariage, &c. donque el al fine des dits 2. ans poit enter & ouſte ſon Seignior. Mes ſi tiel hēre female ſoy marie deins lage de 14. ans en la vie ſon auncestor, & ſon Auncestor devy el eſteant deins lage de 14. ans, le Seignior navera forſq̄ la garde de la terre jeſques a fine de 14. ans dage de tiel heire female, & donq̄ ſhall not have the wardſhip of the Land, nor of the Body, becauſe that a woman of ſuch age may have a Husband able to do Knights Service. But if ſuch heire female be within the age of 14. years, and unmarried at the time of the death of her Anceſtors, the Lord ſhall have the wardſhip of the Land holden of him untill the age of ſuch heire female of 16. years. For it is given by the Statute of W. 1. Cap. 22. that by the ſpace of two years next enſuing the ſaid 14. years, the Lord may tender convenable marriage without diſparagement to ſuch heire female. And if the Lord within the ſaid two years do not tender ſuch marriage, &c. then ſhe at the end of the ſaid two years may enter, and put out her Lord. But if ſuch heir female be married within the age of 14. years in the life of her Anceſtor, and her Anceſtor dieth ſhe being within the age of 14. years, the Lord ſhall have only the Wardſhip of the Land untill the end of the 14. years of age of ſuch

Domino capitali. **And it is called** Scutagium, **as it appeareth** (f) **by** Littleton **and many Authorities before recited. Sometime** droit de eſpee. **Alſo it is called** (g) Regale ſervitium, quia ſpecialiter pertinet ad Dominum Regem. Ut ſi dicatur in Carta, faciendo inde forinſecum ſervitium, vel Regale ſervitium, vel ſervitium Domini Regis, quod idem eſt, &c. **And another ſaith,** Et ſunt quædam ſervitia forinſeca quæ dici poterunt Regalia, quæ ad ſcutum præſtantur, & inde habemus Scutagium, & ratione ſcuti pro feodo militari reputatur, &c. **So as in reſpect of him that doth it, it is called** Servitium militis, **but in reſpect of him for and to whom it is done,** viz. **to the King, and for the Realm, it is called** Servitium Regale, **or** Servitium Domini Regis, &c. (h) **In ancient time they which held by Knights Service were called** Milites, qui per loricas, &c. defendunt, & deſerviunt, &c. **And ſometime this Service is called** ſervitium hauberticum. **And in ancient time ſuch as held by Knights Service for the defence of the Realm had many priviledges granted to them by Law: as for example, they might have a Writ** De eſſend' quiet' de tallagio, **the effect whereof was,** (i) Si Th. filius Ranulphi terram ſuam teneat per ſervitium militare, ſicut Domino Regi monſtravit, tunc nullum ab eodem Th. capiant tallagium, nec pro eo dando ipſum diſtringant, vel homines ſuos qui per conſimile ſervitium teneant. **And this agreeth with the ancient charter of King** Henry **the firſt before mentioned, which he made on the day of his Coronation for the Reſtitution of the ancient Laws.** (k) Militibus qui per loricas terras ſuas defendunt & deſerviunt, terras Dominicarum carucar' ſuarum quietas ab omnibus gildis, & omni onere, &c. concedo: **and the reaſon thereof is there yielded,** Sicut tam magno gravamine allevati ſint, ita equis & armis ſe bene inſtruant,

(f) Bracton ubi ſupra. Fleta lib. 3. cap. 14.

(g) Britton fol. 187. Bracton ubi ſupra.

(h) Carta Hen. prim. Mat. Paris. Mirror cap. 2. ſect. 17.

(i) Rot. claus. 19 H. 3. m. 22.

(k) Carta H. 1. in libro Rub. fol. 41. in ſcaccario.

inſtruant, ut apti & parati ſint ad ſervitium meum, & defenſionem Regni mei. **But theſe Privileges & Quittances are diſcontinued, and the charge remaineth.**

(l) Glanvil lib. 7. ca. 9, 10. Fleta lib. 7. ca. 8, & 9. & lib. 3. ca. 16, 17, &c. Bracton lib. 2. cap. 16. Mirror cap. 5. ſect. 2. Britton 162.

It is called commonly in (l) **our Books,** Servitium militare, &c. or Servitium militis. **And this ſervice was created and provided for the defence of the Realm, to perform which Service the Heirs are not accounted in Law able till the age of one and twenty years. Therefore during their minority, the Lord ſhall have the cuſtody of them, not for benefit only, but that the Lord might ſee that they be in their young years taught the Deeds of Chivalry, and other vertuous and worthy Sciences.**

(m) Forteſcue cap. 44.

(m) Si hæreditas teneatur per Servitium militare, tunc per leges infans ipſe, & hæreditas ejus, &c. per Dominum feodi illius cuſtodientur, &c. Quis, putas, infantem talem in artibus bellicis, quas facere, ratione tenuræ ſuæ, ipſe aſtringitur Domino feodi ſui, melius inſtruere poterit, aut velit, quam Dominus ille, cui ab eo ſervitium tale debetur, & qui majoris potentiæ & honoris æſtimatur quàm ſunt alii amici propinqui tenentis ſui? Ipſe namque, ut ſibi ab eodem Tenente melius ſerviatur, diligentem curam adhibebit, & melius in his eum erudire expertus eſſe cenſetur quam reliqui amici juvenis, &c. Et revera non minimum erit Regno accommodum, ut incolæ ejus in armis ſint experti; nam audacter quilibet facit, quod ſe ſcire ipſe non diffidit.

(n) Lamb. fol. 135. a.

(n) **Amongſt the Laws of Saint** Edward **the Confeſſor, it is thus provided.** Debent enim univerſi liberi homines, &c. ſecundum feodum ſuum, & ſecundum Tenementa ſua, arma habere, & illa ſemper prompta conſervare ad tuitionem Regni, & Servitium Dominorum ſuorum, juxta præceptum Domini Regis explendum & peragendum. **And** William **the Conqueror confirmed that Law in theſe words:** Statuimus & firmiter præcipimus, ut omnes Comites, & Barones, & Milites, & Servientes, & univerſi liberi

ſon baron & luy poient enter en la terre & ouſte le Seignior; car ceo eſt hors de cas de le dit eſtatute, entant que le Seignior ne poit tender mariage a luy que eſt marie, &c. Car devant le dit eſtatute Weſtm. 1. tiel iſſue female que fuit deins age de 14. ans al temps de mort ſon Aunceſtor, & puis que el avoit accompliſh lage de 14. ans, ſans alcun tender de mariage per le Seignior a luy, tiel heire female donque puiſſoit enter en le terre, & ouſte le Seignior, ſicome appiert per le reherſall & parolx de le dit Statute; iſſint que le dit Statute fuit fait en tiel cas tout pur ladvantage de Seigniors, come il ſemble. Mes uncore ẽ touts foits eſt entendue per les parolx de m̃ le Statute, que le Seignior navera les deux ans apres les 14. ans, come eſt avantdit, mes lou tiel heire female ſoit deins lage de 14. ans, nient marie al temps de mort s̃ Auncеſtor.

heir female, and then her Husband and ſhe may enter into the Land, & ouſt the Lord: For this is out of the caſe of the ſaid Statute, inſomuch as the Lord cannot tender marriage to her which is married, &c. For before the ſaid Statute of W. 1. ſuch iſſue female which was within the age of 14. years at the time of the death of her anceſtor, and after ſhe had accompliſhed the age of 14. years, without any tender of marriage by the Lord unto her, ſuch heire Female might have entred into the Land, and ouſted the Lord, as appeareth by the rehearſall and words of the ſaid Statute; ſo as the ſaid Statute, was made (as it ſeemeth) in ſuch caſe altogether for the advantage of Lords. But yet this is alwayes intended by the words of the ſame Statute, that the Lord ſhall not have theſe two years after the 14. years, as is aforeſaid, but where ſuch heir female is within the age of 14. years, and unmarried at the time of the death of her Anceſtor.

liberi homines totius Regni noſtri prædicti habeant & teneant ſe ſemper in armis & in equis, ut decet & oportet, & quod ſint ſemper prompti & parati ad ſervitium ſuum integrum nobis exhibendum & peragendum ſemper cum opus adfuerit, ſecundum quod nobis debent de feodis & tenementis ſuis de jure facere, &c. Out of theſe two Laws the ſtudious and learned Reader will gather divers notable things. And therefore if after the Lord hath the Wardſhip of the Body and the Land, the Lord doth releaſe to the Infant his right in the Seigniory, or the Seigniory deſcendeth to the Infant, he ſhall be out of Ward both for the Body and the Land, for he was in Ward in reſpect he was not able to do thoſe ſervices which he ought to do to his Lord, which now are extinct, and Ceſſante cauſa, ceſſat cauſatum. And our Author ſaith, that the Tenure by Knights Service draweth unto it Ward, Marriage, &c. ſo as there muſt be a Tenure continuing. As if the Conuſor in a Statute Merchant be in execution, and his Land alſo, and the Conuſee releaſe to him all debts, this ſhall diſcharge the execution; for the debt was the cauſe of the execution, and of the continuance of it till the debt be ſatisfied, therefore the diſcharge of the debt, which is the cauſe, diſchargeth the execution, which is the effect.

See W. 1. ca. 48. the ſecond part of the Inſtitutes.

20 Aſſ. p. 7.

¶ *Et trait a luy gard, marriage, et reliefe.* So as regularly there be ſix incidents to Knights Service: (viz.) two of honour and ſubmiſſion, as Homage and Fealty; and four of profit, viz. Eſcuage, whereof he hath treated before, Ward, (i. Wardſhip of the Land) Marriage, and Relief; of all which our Author hath ſpoken. But there be other incidents to Knights Service beſides theſe, (a) as Aide pur fair fits Chivalier, & Aide pur file marier, &c. Which at the Common Law were uncertain, and were called rationabilia auxilia, becauſe if they were exceſſive and unreaſonable in the judgment of the Court where they were queſtioned, they ought not to be paid: But now as well in the King's caſe, as in the caſe of the Subject, they are by Acts of Parliament reduced to certainty, which are worthy your reading.

(a) Grand cuſt. de Normian. cap. 35. Regiſt. orig. fol. 87. Glanvil lib. 9. ca. 8. 35. Fleta lib. 2. ca. 40. & lib. 3. ca. 14. Mirror ca. 1. ſect. 3. Britton fo. 55, & 70. F. N. B. 82. b. W. 1. ca. 35. 25 E. 3. ca. 11. 11 H. 4. 34. 5 E. 3. 11. Vid. ſect. 110.

¶ *Gard*, or Ward, in Latine Cuſtodia, and hereof the Lord is called Gardian, Cuſtos, and the minor is called a Ward, or one in ward. (b) And albeit (as our Author ſaith) Knights Service draweth with it Ward, &c. yet by cuſtome the Heir of him that holdeth in Socage may be in Ward.

(b) 8 H. 3. Preſcript. 38. Paſch. 21 E. 1. coram rege Rot. 43. Nota pro Hibernia Prior del St. Trinitie de Dublin's Caſe.

¶ *Marriage.* Maritagium betokeneth not only the copulation of man and wife in marriage, but alſo (as in this place here) the intereſt of the Gardian in beſtowing of a Ward in marriage, which the Law gave to the Lord, not for his benefit only, but that he ſhould match him vertuouſly and in a good Family without diſparagement, as ſhall be ſaid hereafter, which is the principal foundation of his Eſtate.

¶ (c) *Reliefe.* Relevium is derived from the Latine word Relevare; for ſo (d) ancient Authors ſay, and give this reaſon, Quia hæreditas, quæ jacens fuit per Anteceſſoris deceſſum, relevatur in manus hæredum, & propter factam relevationem facienda erit ab hærede quædam præſtatio quæ dicitur relevium. And in Domeſday it is called Relevamentum and Relevatio.

(c) Vid. ſect. 112.
(d) Bracton lib. 2. ca. 36. fol. 84. Fleta lib. 1. ca. 10. & lib. 3. ca. 16, 17. Britt. ca. 69, 70. Glanvil lib. 9. ca. 4. & lib. 7. ca. 9. Ockam de differentiis releviorum.

The Relief of a whole Knights Fee is five pound, and ſo according to that rate. And this Relief was as ſome hold certain by the Common Law. * But the Reliefs of Earls and Barons were incertain, and therefore were called Relevia rationabilia; but the Statute of Magna Charta, cap. 2. limits them in certain, and mentioneth alſo a Knights fee. But I read in the Book of Domeſday, Quod Tainus vel miles regis dominicus moriens pro relevamento dimittebat regi omnia arma ſua, & equum unum cum ſella, & alium ſine ſella: quod ſi eſſent ei canes vel accipitres, præſtabantur regi, ut, ſi vellet, acciperet.

(*) Ockam ubi ſupra, Bracton lib. 3. fol. 85.

Since Littleton wrote (e) there is a good Law made againſt fraudulent Feoffments, Gifts, Grants, &c. contrived of fraud to hinder or defraud Lords, &c. of their Reliefs and Heriots amongſt other things: for the expoſition of which Statute read the Authorities quoted in the margent. And it is to be obſerved that the words of the ſaid Act of 13 Eliz. are (Be it therefore declared, ordained, and enacted,) and therefore like caſes and in ſemblable miſchief ſhall be taken within the remedy of this Act by reaſon of this word (declared,) whereby it appeareth what the Law was before the making of this Statute.

(e) 13 Eliz. ca. 5. 17 E. 3. Reliefe 2. 7 E. 3. ib. 11. lib. 3. fo. 80, &c. Twine's Caſe. Lib. 5. fo. 60. Gooche's Caſe. Lib. 6. fo. 18. Pakeman's Caſe. Lib. 10. fo. 56. b. See alſo the Statutes of 3 H. 7. c. 4. & 50 E. 3. ca. 6. Vid. Mich. 12 & 13 Eliz. Dyer 295.

¶ *Son heire.* (f) For regularly by the Common Law the Heir ſhall not be in ward unleſs he claim as Heir by deſcent. The Statute of Merton, De hiis qui primogenitos feoffare ſolent, (g) did help Feoffments by colluſion in certain caſes. And Britton ſaith, that Robert de Walrand a Sage of the Law did adviſe the great Lords of the Realm to make the ſaid Statute, which when it was paſt, the ſame Act took his firſt effect in the heir of Walrand's own Heir, whereof Britton maketh a ſpecial remembrance. But now (h) by the Statutes of 32 and 34 H. 8. of Wills, he which holdeth Lands by Knights Service may by Act executed in his life-time, or by his laſt Will in writing, diſpoſe two parts, as by the ſaid Acts appeareth. If he diſpoſe all by Act executed, then it ſhall ſtand good againſt the Heir, ſo

(f) Britton 168. Fleta lib. 1. cap. 9.
(g) Merton cap. 6. Bract. fo. 85. Britt. fo. 65. 9 H. 4. 6. 4 H. 7. ca. 17. 27 H. 8. 7. 89. Partridge's Caſe Pl. com. 81.
(h) 32 H. 8. ca. 1. 34 H. 8. ca. 5.

ſo as nothing ſhall deſcend unto the heir. But in caſe of a deviſe by his laſt Will, a third part ſhall deſcend to the heir, though all be deviſed away: and if the Tenant leave a third part to deſcend, then the Deviſe is good for the reſidue. (i) But theſe things require ſo many diverſities grounded upon evident reaſons, and are ſo plainly expreſſed in my Commentaries, as they (being very long) ſhall not need to be repeated here. (k) And that the Tenure by Knights Service draweth to it Ward, Marriage, and Relief, is of great antiquity, for ſo it was in the time of King Alfred.

(i) Lib.3.fo.25,26. in Butler's Caſe. Lib.6. fo.75. in Sir George Curſon's Caſe. Lib.8. fo.163. Might's Caſe. Eod. lib. fo. 171. in Vigil Parker's Caſe.
(k) Mir. ca.1. ſect.3.

¶ *Quant tiel tenant mort.* Here Littleton ſpeaketh not of a dying ſeiſed by the Tenant, for in many caſes the Heir ſhall be in ward, albeit the Tenant died not ſeiſed, &c. nor in the homage of the Lord. As if the Tenant maketh a feoffment in fee upon condition, and the Feoffor dieth, after his death the condition is broken, the heir within age entreth for the condition broken, he ſhall be in ward, and yet the Feoffor had no eſtate or right in the Land at the time of his death but only a condition, and which was broken after his deceaſe. (*) But becauſe the condition reſtoreth the Tenant to the Land in nature of a deſcent, (for he ſhall be in by deſcent) by the ſame reaſon ſhall it reſtore the Lord to the wardſhip, ſeeing now (as Littleton ſaith) the heir of his Tenant is within age, and not able to do him ſervice, and no default in the Lord to bar him of his wardſhip.

(*) 39 E.3. 36.tit.Gard. 92. 33 E.3. Gard. 162. 1 H.7.12. 19 E.3.1. Gard.114. 18 Aſſ.18. 40 Aſſ.36. 20 El. 362. 4 H.6.16.b. F.N.B. 143. 6 H. 4. 4. 2.

(l) And ſo I do take it, that if the heir within age recover in a Dum non fuit compos mentis, or Formedon en diſcender, or remainder as heir, or ſuch like, the heir ſhall be in ward, for theſe be ſtronger caſes then the former, for here a right doth deſcend to the Demandant, which right being by courſe of Law reſtored to the poſſeſſion of the heir within age, by conſequence the Lord is to have the Wardſhip of him: but in the caſe of the condition no right at all deſcended to the heir, as hath been ſaid.

(l) 7 H.4.12. 11 H.7.12. 22 E.4.6,7. 40 E.3.43. 4 M.136. 15 E.4.10,11.

And ſo if Tenant in tail, the Remainder in fee, maketh a Feoffment in fee, and dieth leaving the iſſue in tail within age, if the Feoffee infeoff the iſſue in tail, whereby he is remitted, he ſhall be in Ward to the Lord: for as he is reſtored to the Title of the Land as heir, ſo is the Lord reſtored to his Title of wardſhip as Lord of the Fee. And as to this purpoſe herein I take no difference between a right of action and a right of entry deſcending, when by action the right of the Land is lawfully recovered by the heir within age to his Tenant; and albeit he dies not in his homage, yet there was a right of homage, and no default or laches was in the Lord, or act done by him to prejudice himſelf thereof.

33 E.3. Gard. 162.

But if one levy a Fine executory (as Sur grant & render) to a man and his heirs, and he to whom the Land is granted and rendred, before execution, dieth, his heir being within age entreth, he ſhall not be in Ward, for his Anceſtor was never Tenant to the Lord: and ſo there is a manifeſt diverſity between this and the other caſes. Et ſic de cæteris.

11 H. 7. 12.

But if the Tenant maketh a Feoffment in Fee of Lands holden by Knights Service, to the uſe of the Feoffee and his heirs, untill the time that the Feoffor pay to the Feoffee or his heirs a hundred pounds, for the which a time and place is limited, the Feoffee dieth, his heir within age, the Lord ſhall have the Wardſhip of the body of the heir, and of the Lands of the Feoffee, conditionally, for he cannot have a more abſolute intereſt in the Wardſhip then the heir hath in the Tenancy: and therefore if the Feoffor pay the money at the day & place, and entreth into the Land, in this caſe both the Wardſhip of the body and lands is deveſted, becauſe the Lord had no abſolute intereſt in neither of them, but doth depend upon the performance or not performance of the Condition.

13 El. Dyer 298.

(*) So if the Conuſor of a Fine executory of Lands holden by Knights Service dieth, his heir within age, the Lord ſhall have the Wardſhip of the body and land: but if the Conuſee entreth, the heir is diſherited, and the Lord hath loſt the whole benefit of his Wardſhip.

(*) 12 H.4.16. per Thirning.

If the Diſſeiſee dieth, his heir being within age, (m) the Lord ſhall have the Wardſhip of the heir of the body of the Diſſeiſee. (n) But put the caſe that in that caſe the Diſſeiſor dieth ſeiſed, and his heir within age, the Lord may ſeiſe the Wardſhip of his heir alſo, and of the Land alſo: but the doubt is, whether the heir of the Diſſeiſee ſhall after the deſcent to the heir of the Diſſeiſor continue in Ward, for that after the deſcent the heir of the Diſſeiſor is become his lawful Tenant, and the heir of the Diſſeiſee is not Tenant unto him until he hath recovered the Land.

(m) 41 E.3.225.
(n) 15 E.4.11.

If Ceſtui que uſe before the Statute of 27 H. 8. had died, his heir within age, the Lord (o) ſhould have the Wardſhip of his heir; and if the Feoffee had died, his heir within age, the Lord ſhould have had the Wardſhip of his heir alſo, and ſo a double Wardſhip for one and the ſame Land; the one by the Statute of 4 H.7. the other by the Common Law.

(o) 14 H.8.5. 4 H.7.
(p) 41 E.3. 26.tit. Avowrie 264. 20 H.6.9. 48 E.3.8.b. 10 E.3.26. 31 E.3.tit. Gard.116. 18 E.3.7. 14 H.4.38. 1 H.5.Grant 43. 5 E.4.3. 7 E.4.27. 15 E.4.13.2 E.2.Avow.181.

(p) Tenant by Knights Service maketh a gift in tail, the Remainder in fee, Tenant in tail maketh a feoffment in Fee, and dieth, his heir within age, the Lord ſhall have the Wardſhip of him: and if the Feoffee dieth, his heir within age, the Lord ſhall have the Wardſhip alſo of his heir, and of the land.

If

If Tenant by Knights Service maketh a gift in tail, and the Donee maketh a feoffment in fee, and the Donee dieth, his heir within age, the Donor shall have the Wardship of him, because he is his Tenant in right. (q) But if the Feoffee dieth, his heir within age, the Donor shall not have the Wardship of his heir, but the Lord Paramount, because he is Tenant in fait to him: (r) neither shall the Donor avow upon the Feoffee or his heir, for the service due unto him, because he must in his Avowry shew the reversion in fee to be out of him by the feoffment, and consequently the services incident to the reversion are also out of him; but he shall avow upon the Donee and his issues: and thus are all the Books, that seem to be at variance, either answered or reconciled.

(q) So was it holden Tr. 18 El. in Com. Banco per Cur. which my self heard and noted, in Sir Thomas Wyat's Case.

(r) So it was resolved in Sir Thomas Wyat's case, ubi supra.

¶ (a) *La terre tenus de luy, &c.* Littleton here speaketh of lands holden of a Subject: for if a man hold land of the King by Knights Service in capite, and other lands of other Lords, and dieth, his heir within age, the King shall have the wardship of all the lands by his Prerogative: and this was due to the King by the Common Law, the fees of certain excepted, as in the Statute of Prærogativa Regis, cap.1. appeareth.

(a) Glanvil lib.7. cap.10. Bract.lib.2. fo.85,86,87. Brit.l.3. c.2. Flet. l.1.c.10. 9 H. 3. Prærog.25. 21 H.3. lib.26. Rot. Finium 6. Johan. Stat. Prærog. Reg. c.1.

But if a man holdeth lands of the King by Knights Service, as of an Honor or Manor, &c. (b) in that case the King shall only have the lands holden of him, and not of any other. Yet by reason of Tenures of the King by Knights Service, of certain Honors, (while they were in the Kings hands) the King (as some have said) had (as it were by prescription) his Prerogative, viz. Raleigh hagener bonony and Peverel, and so of lands holden by Knights Service of the Dutchy of Lancaster in the County Palatine.

(b) Bract. ubi supra. Mag. Carta cap.31. 1 E.6 ca.4. 5 E.3.5. 47 E.3.21. 29 H.8. Br. tit. Liver. 58. 28 H.8. ibid.55.

(c) When an heir hath been in ward to the King by reason of a Tenure in capite, after his full age he must sue livery, which is half a years profit of his lands holden. But if he be of full age at the time of the death of his Ancestor, then he shall pay for lands in possession a whole years profit for Primer seisin: but if it be of a Reversion expectant upon an estate for life, as Tenant in Dower, Tenant by the Curtesie, or Tenant for life, then he shall pay but the moiety of one years profit.

(c) Lib.8.fol. 172. Hales Case. 38 H.8. Br. tit. Livery 60. Vid. sect.154.

(d) If the heir be in ward by reason of a Tenure of an Honor or Manor, (except as before) he shall not sue livery, but an Ouster le maine cum exitibus, albeit he never made tender. (e) And if he be of full age, the King shall have no Primer seisin, but relief. But where the Tenure is in capite, there the King shall have the mean profits untill the tender be made: and if the tender be made, and not duly pursued, the King shall also have all the mean profits.

(d) 1 El. Dier 168.
(e) 32 H.8. tit. Liv.Br.62.

(f) He that holdeth of the King by Socage in chief, and dieth, his heir of full age, the King shall have Livery and Primer seisin only of the lands so holden, and not of the lands holden of other. (g) But if the heir of such a Tenant in Socage in chief be within the age of fourteen at the death of his Ancestor, he shall neither sue Livery, nor pay Primer seisin, either then or any time after: and the reason thereof is, for that the custody of his body and lands in that case belong to the Prochein amy, as Gardian in Socage. (h) Neither shall the King have Primer seisin of lands holden in Burgage, (as some have said) for that it is no Tenure in Capite.

(f) 38 H.8. Liver. Br.60. 45 E.3.11. 35 H.6.52. Stanf.13. b.
(g) 20 El. Dier 362. F.N.B. 259. b.
(h) F.N.B.261. 7 E.4.17. Stanf.Prær.13. Br.tit. Liv.65.

Note, there is a general Livery, and a speciall Livery. A general Livery hath two properties.

First, it is full of charge to the heir, for he must find an office in every County where he hath land, or else he cannot sue a general Livery, and he must sue out his Writ of Ætate probanda, &c.

(i) The second property is, that it is full of danger. First, it concludeth the heir for ever after to deny any Tenure found in the office. Secondly, If Livery be not sued of all and of every parcel which the King ought to have, whether it be found in the office or not found, (for a general Livery could not be sued by parcels) the Livery is void, and the King may re-seise the lands, and be answered of the mean profits. So it is if the Office be insufficient, or the Process whereof the Livery was made be insufficient, or the like, the King shall re-seise as is afore-said. (a) Therefore for the case of the heir, and for avoiding of such danger, the heir for the most part sueth out a special Livery, which containeth a beneficial pardon, and saveth the said charges, and preventeth the said conclusion, and other dangers: which being of grace, and not of right, as the general Livery is, the King may well and justly take more for a special Livery, then for a general, for the causes aforesaid, but ever with such moderation as the heir may cheerfully go through therewith.

(i) 46 E.3.33. 47 E.3.21. 21 H.6. 28. b. 33 H.6.50. 29 Ass.8. Pl.Com. Countess of Leic. case. 44 E. 3.1.& 23. 12 R.2. Liv.28. 2 H.7. fol.12.
(a) 1 H.4.6.b. 37 H.8.Estop. Br.218. 7. E.6. ib.232. Scurfield's case. Tr.8 Ja. in cur. Ward. 23 El. Dier 377. 28 H.8. Br. tit. Livery 56.

Note that a Livery is in nature of a Restitution, which is to be taken favorably: for if Livery be made of a Manor cum pertinentiis, the heir shall thereby have the Advowson appendant; otherwise it is in Grants by Letters Patents.

41 E.3.5.5 E.6.6. 27 Ass.48. Pl.Com.252. 20 El.Di. 360.

Since the time that Littleton wrote, (c) there is a Court of Wards and Liveries created by authority of Parliament concerning the order of the Kings Wards, &c. to be holden before the Master of the Wards, and the Council of that Court appointed by those Acts. This hath made

(c) 32 H.8.46. 33 H.8.c.21.

made ſuch a manifold alteration, as were too long here to be inſerted, and doth belong to another Treatiſe mentioned in the Epiſtle of the Jurisdiction of Courts, where it were neceſſary that the true Jurisdiction of that Court ſhould be ſet down, a matter of no great difficulty, ſeeing it began ſo late by authority of Parliament. And ſince Littletons time (d) there is a right profitable Statute made concerning the finding of Offices and other things, not only concerning the Kings Wards, or their rights and poſſeſſions, but ſome other proviſions very beneficial for the Subject, in all to the number of twelve. (e) Firſt, that ſuch perſons as hold for term of years, or by copy of Court-Roll, or have any Rent, common, or profit appxender out of any lands, found in any Office, whereby the King is intituled to the wardſhip of the lands or tenements, or to the forfeiture of the lands or tenements upon attainder of Treaſon, Felony, Præmunire, or any other offence; yet may they have, hold, enjoy, and perceive their ſeveral eſtates, intereſts, and profits, although they be not found in the Office. And this being a beneficial Law, the eſtates of Tenant by Statute Staple, Merchant, and Elegit, and Executors that hold lands for payment of debts, are taken to be within the benefit of the clauſe: (f) and ſo is a doubt in 14 El. Dier cleared.

(d) 2 E. 6. cap. 8.

(e) 4 E. 4. 23. 33 H. 8. tit. Entre congeable Br. 125.

(f) 14 Eliz. Dier fol. 319.

2. Where it is found that the heir is of fewer years then in truth he is, he ſhall not be concluded hereby; (g) but every ſuch heir at his very full age may proſecute a Writ of Ætate probanda, and ſue his Livery or Ouſter le maine, in which caſe he had no remedy by the Common Law. But the King may traverſe ſuch an office found.

(g) 5 Mar. Dier 156.

(a) 24 E. 3. 31. 38. 9 H. 6. 18. 12 E. 4. 16. 30 Aſſ. 28. li. 4. f. 56. & 60. Sadlers caſe. Stanf. prerog. 58. b. 52. 5 E. 4. 4. 16 E. 4. 4. 1 H. 7. 14. 2 H. 7. 12. 4 H. 7. 15. 8 H. 7. 11. F. N. B. 262. 12 R. 2. Livery 28. F. N. B. 233. Lib. 7. fol. 44, 45. Kens Caſe.

3. (a) Where one perſon or more be found heir, where another perſon is heir, the party grieved had no remedy.

4. Or where one perſon or more be found heir in one County, and another perſon or perſons found heir in another County, there could have been no interpleading.

5. Or if any perſon be untruly found by office lunatick, or Ideot, or dead, the party grieved may traverſe the ſaid Offices; and you may read in Kens caſe how the Office ſhall be traverſed upon this Act.

(b) 4 E. 4. 23. 10 H. 6. 19. Lib. 4. fol. 56, &c. Sadlers Caſe. 32 H. 8. Entre cong. Br. 125. 14 E. 3. cap. 14.

(b) 6. Where it is untruly found by Office that any perſon attainted of Treaſon, Felony, or Præmunire, is ſeiſed of any lands, &c. the party grieved, having juſt title of Freehold, ſhall have his traverſe or Monſtrans de droit, (without being driven by this double matter of Record to his petition of right, as he was before this Statute:) which is much more ſpeedy then the petition; for upon the petition there be four Writs of ſearch, and every one muſt have forty dayes before the ſerving, and now but two Writs of ſearch.

(c) Vid. lib. 6. fol. 6. Wheelers Caſe.

(c) 7. Where an Office is found by theſe words or the like, quod de quo vel de quibus tenementa prædicta tenentur, juratores præd' ignorant, or holden of the King per quæ ſervitia juratores ignorant, it ſhall not be taken for any immediate Tenure of the King in chief, but in ſuch caſes a Melius inquirendum to be awarded, as hath been accuſtomed of old time. This branch hath been well (d) expounded: for if the firſt office find a Tenure of the King per quæ ſervitia, &c. yet if upon the Melius inquirendum, the Tenure be found of a Subject, the firſt office hath loſt his force per ſenſum hujus ſtatuti, and need not be traverſed, and the Melius, &c. is in nature of the Diem clauſit extremum or mandamus, &c. and this was but a declaration of the ancient Common Law, as by the words of the Statute (as hath been accuſtomed of old) it appeareth. But if upon the Melius it be found again as uncertainly as before is ſaid, then it is in judgment of Law a Tenure in capite, and ſo it was before the making of this Act, and ſo are the Books that ſpeak hereof to be intended. But if upon the Melius a Tenure be found of the King ut de manerio per quæ ſervitia, &c. it ſhall be taken for Knights Service.

(d) 12 Eliz. Dier fo. 292. 2. lib. 8. f. 168. Paris Stoughters Caſe.

8. Where it is found that lands, &c. are holden of the King immediately, where in truth they are holden of a common perſon, and not of the King immediately, and that the heir is within age, ſuch heir within age ſhall have his traverſe, &c. which he could not have had by the Common Law.

13 Eliz. Dier 306. 4 H. 6. 13. 10 H. 4. 2. b.

9. The mean Lords of whom the lands are holden which the King hath by his prerogative, during the minority of the heir, ſhall receive and take ſuch Rents as are due unto them by the hands of ſuch of the Kings Officers as receive the profits of the ſame lands, where before that Act the Lords uſed to ſpare the Rents due, &c. during the Kings poſſeſſion, and after livery ſued, charged the heir with all the arrerages.

10. There is a proviſion for Offices found before the Statute, or before the 20. day of March next after the Act.

11. A ſpecial clauſe is, That a Scire fac' ſhall be awarded upon every Traverſe by force of this Act; and where the party was put to his petition, there upon the Traverſe there ſhall be two Writs of ſearch granted.

12. And laſtly, if judgment ſhall be given againſt the King upon a Traverſe by virtue of this Act, all former Rights appearing of Record are ſaved to the King. But albeit theſe points are moſt neceſſary to be known, yet let us now return to Littleton.

15 E. 4. 12. 46 E. 3. 12. 21 H. 6. 11. 3 H. 7. 5.

Littleton warily and materially treating of a common perſon ſaith, tenus de luy, holden of him, for he ſhall have nothing in ward but that which is holden of him. But the King by his prerogative

prerogative ſhall not only have ſuch lands and tenements which (as hath been ſaid) the heir of his Tenant by Knights Service in capite holdeth of others, but ſuch inheritances alſo as are not holden at all of any, as Rent Charges, Rent Secke, Fairs, Markets, Warrens, Annuities, and the like; and ſo is the Law clearly holden at this day, as it hath been reſolved: and ſo experience teacheth, that the King by his prerogative given to him by the ancient Common Law ſhall have thoſe inheritances not holden: and ſo the quære made by (o) Stanford is cleared and made without queſtion. (o) Stanf. prær. fol.8.

The Law is changed ſince Littleton wrote in many caſes, both for the marriage of the body, and for the wardſhip of the lands, and a far greater benefit given to the Lords then the Common Law gave them; and ſome advantage given to the heirs, which before they had not, which ſhall be touched briefly.

If the Father had made an eſtate for life, or a gift in tail of lands holden by Knights Service to his eldeſt Son, or other heir apparent within age, the remainder in fee to any other, and died, the heir ſhould not have been in ward, for this was out of the Statute of Marlebridge: But at this day the heir ſhall be in that caſe in ward for his body, and a third part of his land. Marlebridge cap. 1. Pl. Com. 82. 27 H.10. 33 H.6.14.

(a) So if the Father had infeoffed his eldeſt ſon within age, and a ſtranger and the heirs of the ſon, and died, the ſon ſhould have been out of ward; but at this day he ſhall be in ward for his body, and for a third part of his moiety. (b) So if the Father had infeoffed any of his younger ſons or others for the making of his wife a Joynture, or for the advancement of his daughters, or for the payment of his debts, and after infeoffed or conveyed the land to his heir, and died, his heir within age, his heir ſhould not have been in ward, becauſe he was bound by the Law of Nature and Nations to provide for them; but now in all theſe caſes the heir ſhall be in ward for his body, and a third part of the land: and all this groweth by conſtruction upon the Statutes of 32 and 34 H.8. (c) But if either the eldeſt ſon or any of the younger ſons purchaſe lands of his Father which are holden by Knights Service, bona fide for the reaſonable value; this is out of thoſe Statutes, and the heir ſhall neither be in ward, nor pay Primer ſeiſin. (a) 31 E.3. Colluſion 29. 33 H. 6. 14. (b) 33 H.6.14. 27 H.8.7. Lib.6. fol. 76, 77. Sir George Curſon's Caſe. 10 Eliz. 260. 3 Eliz. 193. 20 Eliz. 361. 19 Eliz. 276. 5 Mariæ 158. (c) Lib.8. fol.83. Leonard Lovey's Caſe.

And in all the caſes abovеſaid, (for example) if a Feoffment be made to the uſe of his wife for life, or to the uſe of any of his younger ſons for life, or to the uſe of ſome perſons for life for payment of debts, and upon all theſe eſtates a remainder is limited over; if the wife or tenant for life die in the life of the Father, (d) or if it be conveyed to the uſe of the wife or younger children in fee, or fee tail, or in fee for payment of debts, and theſe lands are conveyed away in the life-time of the Father, after the deceaſe of the Father no wardſhip, &c. accrueth by force of any of the ſaid Statutes, for ſuch eſtates muſt continue till the title of wardſhip doth grow. (d) Lib.2. fol.91. Bingham's Caſe. Lib.6. ubi ſupra 84. Lib.8. fol.165. Digbye's caſe.

(e) If the Father convey his lands holden by Knights Service, either of the King or of any mean Lord, to his middle ſon in tail, the remainder to the youngeſt ſon in fee, and dieth, the eldeſt being within age, and the King or Lord ſeize the body and two parts of the land, if the middle brother die without iſſue, the King or the Lord ſhall not have any benefit of the Statute againſt him in remainder, for the Statute was once ſatisfied, and the Statute extendeth not to him in remainder. (e) 14 Eliz. Dyer 308. 3 Mariæ Dyer 130. Lib.2. fol.93,94. Bingham's Caſe, and Northcot's Caſe. Lib.10. fol.80. b. Leonard Lovey's Caſe.

(f) If there be a Grandfather, Father, and divers ſons, and the Grandfather in the life of the Father convey his lands holden by Knights Service to any of the ſons, this is out of the Statute of 32 H.8. and if the Grandfather die, there is neither Wardſhip nor Primer ſeiſin due. For the Father hath the immediate care of his ſons: but if the Father be dead, then the care of them belongs to the Grandfather, and then if the Grandfather convey any of the lands to any of the ſons, it is within the ſaid Statute: (g) and a conveyance to the uſe of any of his collateral bloud, which is not his heir apparent, is out of the ſaid Statute. And ſo are conveyances either by Father or Mother, to or for the uſe of baſtard children, out of the Statute; for qui ex damnato coitu naſcuntur, inter liberos non computentur; and the Preamble ſpeaketh of lawful generations. If a man ſeiſed of Lands holden in Socage convey them to the uſe of his wife, or of his children, for payment of his debts, and after purchaſe lands holden by Knights Service in capite, and dieth, his heir within age, the King ſhall have no part of the Socage land. (h) But if in that caſe he had by his will in writing deviſed his Socage lands in Fee, and after purchaſed lands holden in capite, and dieth, the King ſhall have ſo much of the Socage lands as will make a full third of all. The benefits that grew to the Subject by thoſe Acts of Parliament were, that Tenants in Fee ſimple might deviſe their lands by their laſt wills in writing in ſuch manner and form as by the ſaid Acts appeareth. Alſo that the Father might infeoffe his eldeſt ſon, or other heir lineal or collaterall, of his lands holden by Knights Service, and two parts of the lands ſhall be out of ward. And in *Mighs Caſe you ſhall read excellent matter of eſtates made upon Colluſion. (f) Lib.6. fol. 77. Sir George Curſon's Caſe. 2 Eliz. Dyer 181. 8 Eliz. Dyer 252. (g) Lib.10. fol.83. Leonard Lovey's Caſe. 18 Eliz. Dyer 383. (h) Leon. Lovey's Caſe; ubi ſupra. Butler and Baker's Caſe, lib.3. fol.25,&c. (*) Lib.8. fol. 163. Mighs Caſe.

And both the Statutes of 32 and 34 H. 8. concerning Wills and Wardſhips are many ways prejudicial to the heirs, as taking one example for many. If Tenant by Knights Service

ſervice make a feoffment in fee to the uſe of his wife and her heirs, or to the uſe of a younger ſon and his heirs, or wholly for the payment of his debts; in theſe caſes, although nothing at all of the lands ſo holden deſcend to the heir, but he is diſherited of the ſame, yet his body ſhall be in ward. But this for a little taſte may ſuffice, more hereof you may read in my Reports in the ſeveral caſes noted in the margent.

Leon. Loveys caſe ubi ſupra. 22 Eliz. Dier 367.

¶ *Pleine age.* Full age regularly is one and twenty years.

22 E. 3. Gard. 61.

¶ *Entendment de Ley.* Entendment, i. Intellectus, the underſtanding or intelligence of the Law. Regularly Judges ought to adjudge according to the common intendment of Law.

3 H. 5. 4.

10 H. 6. 8. 21 E. 3. 33. a. 27 H. 8. fol. 10.

By intendment of Law every Parſon or Rector of a Church is ſuppoſed to be reſident on his Benefice, unleſs the contrary be proved.

Of common intendment one part of a Manor ſhall not be of another nature then the reſt.

Of common intendment a Will ſhall not be ſuppoſed to be made by colluſion. In facto quod ſe habet ad bonum & malum, magis de bono, quam de malo, lex intendit. Lex intendit vicinum vicini facta ſcire. Nulla impoſſibilia aut inhoneſta ſunt præſumenda, vera autem & honeſta & poſſibilia. Lex ſemper intendit quod convenit rationi. As in this caſe, the Gardian ſhall have the cuſtody of the land until the heir come to his full age of one and twenty years, becauſe by intendment of Law the heir is not able to do Knights Service before that age: which is grounded upon apparent reaſon. There note, that the full age of a man or woman to alien, demiſe, let, contract, &c. is one and twenty years, in the Civil Law five and twenty years; for then the Romans accounted men to have plenam maturitatem, and the Lombards at eighteen years.

Vide Britton fol. 169.

¶ *Si le heire ne ſoit marie al temps del mort de tiel Auncеſtor, &c.* Auncеſtor is derived of the Latine word Anteceſſor, and in Law there is a difference between Anteceſſor and Prædeceſſor. For Anteceſſor is applied to a natural perſon, as J. S. & Anteceſſores ſui; but Prædeceſſor is applied to a Body Politique or Corporate, as Epiſcopus London & prædeceſſores ſui, Rector de D. & prædeceſſores ſui, &c.

Glanvil lib. 7. cap. 1. Mirror cap. 5. ſect. 2. Britton fol. 168. b. 39 H. 6. cap. 2.

¶ *Mes ſi tiel tenant devie, ſon heire female eſteant del age de* 14 *ans, &c.* And the reaſon, as I find in antiquity, wherefore the Lord gave the marriage of the heir female if ſhe were within the age of fourteen, and that ſhe ſhould not marry her ſelf, was, Pur ceo que les heires females de noſtre terre ne ſe marieront a nous enemies, & dount il nous coviendroit lour homage prendre, ſi eux ſe puiſſent marier a lour volunt. This is a ſpecial age for an heir female to be out of ward, if ſhe attain unto it in the life-time of her Anceſtor, for at that age ſhe may have a husband able to do Knights Service. A woman hath ſeven ages for ſeveral purpoſes appointed to her by Law: as ſeven years for the Lord to have aid pur file marier, nine years to deſerve Dower, twelve years to conſent to marriage, untill fourteen years to be in Ward, fourteen years to be out of Ward, if ſhe attained thereunto in the life of her Anceſtor, ſixteen years for to tender her marriage, if ſhe were under the age of fourteen at the death of her Anceſtor, and one and twenty years to alienate her lands, goods and chattels.

35 H. 6. 40. Bract. lib. 2. cap. 37.

A man alſo by the Law for ſeveral purpoſes hath divers ages aſſigned unto him: viz. twelve years to take the Oath of Allegeance in the Tourne or Leet, fourteen years to conſent to marriage, fourteen years for the heir in Socage to chuſe his Gardian, and fourteen years is alſo accounted his age of diſcretion, ſixteen years for the Lord to have aid pur faire fits Chivaler, under one and twenty to be in Ward to the Lord by Knights Service, under fourteen to be in Ward to Gardian in Socage, fourteen to be out of Ward of Gardian in Socage, and one and twenty to be out of Ward of Gardian in Chivalry, and to alien his lands, goods and chattels.

34 E. 1. Stat. 3. Glanvil lib. 7. cap. 9. Dier 5 Mar. 162. Bracton lib. 2. cap. 37. F. N. B. 202.

¶ *Mes ſi tiel heire female ſoit deins lage de* 14. *ans, & nient marie, &c. le Seignior avera la gard del terre.* But put caſe that the Lord cannot have the wardſhip of the land, as if the Lord before the age of fourteen granteth over the Wardſhip of the body, in this caſe the Grantee of the body cannot enjoy the benefit of the two years, becauſe he cannot hold over the land, and the Lord which hath the Wardſhip of the land only ſhould loſe the benefit of the two years, becauſe he hath the lands only, and cannot tender any marriage: therefore in this caſe the heir female ſhall enter into her land at her age of fourteen years. So if a Tenant holdeth of one Lord by priority, and of another by poſteriority, and dieth, his heir female within the age of fourteen years, the Lord by poſteriority ſhall have the lands but untill her age of fourteen years, becauſe the marriage belongeth not to him. Alſo if the Lord marrieth the heir female within the two years, her husband and ſhe ſhall preſently enter into the lands. For, Ceſſante cauſa, ceſſat effectus; & ceſſante ratione legis, ceſſat beneficium legis.

35 H. 6. 52. tit. gard. 71. Stanford 3. b. F. N. B. 256, 259. 35 H. 6. 40.

Britton fol. 169. 35 H. 6. 52.

If

If the Lord tender a convenable marriage to the heir within the two years, and he marry elſewhere within thoſe two years, the Lord ſhall not have the forfeiture of the marriage, for the Statute giveth the two years oncly to make a tender. 35 H.6.52. 35 H. 6. tit. gard.71. Lib.6. fol.71. the Lord Darcies caſe.

¶ *Et ſi le Seignior deins les dits* 2. *ans ne luy tender tiel mariage, &c. donque el al fine del dits* 2. *ans poet entrer, & ouſte le Seignior.* This is ſo evident, as it needeth no explication.

¶ *Mes ſi tiel heire female ſoit marie deins lage de* 14. *ans en la vie ſon Anceſtor, & ſon Anceſtor devie il eſteant deins age de* 14. *ans, le Seignior navera le gard forſque de la terre jeſque al age de* 14. *ans, &c.* Note, albeit the heir female be married at the age of twelve years in the life of her Anceſtor, (at which age ſhe may conſent to matrimony) to a man of full age, that is able to do Knights ſervice; yet if the Anceſtor die before her age of fourteen, the Gardian ſhall have the land untill her age of fourteen, becauſe (as it hath been ſaid) that is the time appointed by the Common Law. And ſo if the heir male be married in the life of the Anceſtor at his age of fourteen years, and the Anceſtor dieth, the Lord ſhall have the land untill the Ward cometh to the age of one and twenty. F.N.B. 143.

¶ *Car ceo eſt hors del caſe del dit ſtatute, intant que le Seignior ne poet tender mariage a luy que eſt marie.*

Natura non facit vacuum, nec lex ſupervacuum. The Law doth never enforce a man to do a vain thing.

And where the ſaid Statute of W. 1. giveth unto the Lord the ſaid two years, thereby is implied, that if he dieth within the two years, his Executors or Adminiſtrators ſhall have the ſame. For when the Statute veſteth an intereſt in the Lord, the Law giveth the ſame to his Executors or Adminiſtrators. Then put caſe, if a Lord hath the Wardſhip of the body and land of an heir female, and maketh his Executor, and dieth before her age of fourteen years, whether the Executor ſhall have the two years, becauſe the Executor is not Lord. But I take it, the Executor having the Wardſhip of the body and land, ſhall in that caſe have the two years, for that they were veſted in the Lord. 27 H.8.3. 11 E.3. Exec.77. 4 E.3.55. 28 Aſſ.p.7.

It is farther provided by the ſaid Statute, that if the Lord tender a convenable marriage to the heir female within the ſaid two years, and the heir female refuſeth, then the Lord ſhall hold the Land untill her age of one and twenty years; and farther, untill he hath levied the value of her marriage. But if the Lord doth not tender a marriage within the two years, he ſhall loſe the value of the marriage, and content himſelf with the two years value. 31 Aſſ.p.26. Lib.6.fol.71. L.Darcies caſe.

¶ *Car devant le dit ſtatute, &c. ſicome appiert per le rehearſal & parols de le dit ſtatute.* Nota, The rehearſal or preamble of the Statute is a good mean to find out the meaning of the Statute, and as it were a key to open the underſtanding thereof. The tender of a marriage to an heir female before the age of fourteen is void, which muſt be underſtood where the Lord may hold the land for the ſaid two years, for then the Statute appointeth the time of the tender; but where the Lord cannot have the two years, he may tender a marriage to the heir female at any time after the age of twelve, and before fourteen, for ſo he might have done at the Common Law. 35 H.6.52. gard.71. 35 H.6.52. gard.71. Lib.6. fol.71. Lo. Darcies caſe. Britton 169.

Sect. 104.

¶ NOta, que le pleine age de male & female, ſolonque le common parlance, eſt dit lage de 21. ans. Et lage de diſcretion eſt dit lage de 14. ans; car a tiel age, le enfant que eſt marrie deins tiel age a un feme puit agreer

NOte, that the full age of male and female, according to common ſpeech, is ſaid the age of 21. years. And the age of diſcretion is called the age of 14. years; for at this age, the Infant which is married within ſuch age to a wo-

¶ Of full age, which is the age of one and twenty, and of the age of diſcretion, which is the age of 14. ſomewhat hath been ſpoken before. But now to the point of agreement or diſagreement in this caſe. The time of agreement or diſagreement, when they marry infra annos nubiles, is for the woman at 12. or after, and for the man, at fourteen or after; and there need no new marriage, if they ſo agree: but diſagree they cannot 5 Mar. gard. Br. p'. ultim. 39 E.3.32,33. Prer. reg. cap.6. Tr. 24 Eliz. Rot. 842. in banke le Roy Baniſters caſe.

not before the ſaid ages, and then they may diſagree and marry again to others without any divorce: and if they once after give conſent, they can never diſagree after. If a man of the age of fourteen marry a woman of the age of ten; at her age of twelve he may as well diſagree as ſhe may, though he were of the age of conſent, becauſe in contracts of Matrimony either both muſt be bound, or equal election of diſagreement given to both; and ſo è converſo, if the woman be of the age of conſent, and the man under.

a tiel marriage, ou diſagrêer.

man may agree or diſagree to ſuch marriage.

Sect. 105.

¶ It is a maxim in Law, Quod Dominus non maritabit minorem in cuſtodia ſua niſi ſemel. And another ſaith, Si ſemel legitime nupt' fuer', &c. poſtmodum non tenebuntur ſub cuſtodia dominorum eſſe. Albeit this marriage is de facto, and not de jure, and though the diſagreement diſſolveth it ab initio, yet the Lord ſhall never have the marriage of him.

13 E.1. gard.137. Britton, fol.169. acc.

Glanvil lib.7. cap.12. 27 H.6. gard.118.

27 H.6. gard.118.

And ſo if the Gardian marrieth his Ward to a woman, and after the marriage is diſſolved by reaſon of a precontract; yet the Gardian ſhall never have the marriage of the Ward again.

27 H.6. gard.118.

But if one raviſheth a Ward from the Lord, and marrieth him within the age of conſent; in that caſe if the Lord taketh again his Ward, and he at the age of conſent diſagreeth to the marriage, the Lord ſhall have the marriage of him, for he never had it before.

F. N. B. 143.

So likewiſe if the Anceſtor marrieth his heir apparent infra annos nubiles, and dieth his heir within age, the Ward diſagreeth, the Gardian ſhall have the Wardſhip of him. The ſame Law it is in the ſame caſe, if the wife dieth before the age of conſent, the Lord ſhall have the marriage of the heir.

7 H.6.11.

¶ Et ſi le Gardein en Chivalrie marie un foits le garde deins lage de 14. ans a un feme, & puis fil al age de 14. ans diſagree a le mariage, il eſt dit per aſcuns, que lenfant neſt pas tenus per le Ley deſtre auterfoits marie per ſon Gardeine, pur ceo que le Gardeine avoit un foits le mariage de luy, & pur ceo il fuit hors de ſon garde, quant al garde d ſon corps. Et quant il avoit un foits le mariage de luy, & un foits fuit hors de ſon garde, il navera plus avant le mariage de luy.

And if the Gardian in Chivalry doth once marry the Ward within his age of 14. years to a woman, and if afterward at his age of 14. years he diſagree to the marriage, it is ſaid by ſome, that the Infant is not tied by the Law to be again married by his Gardian, for that the Gardian had once the marriage of him, and becauſe he was once out of his ward, as to the ward of his body. And when he had once the marriage of him, and he was once out of his Wardſhip, he ſhall no more have the marriage of him.

(a) 30 E.1. gard.156. 12 E.1. gard.138. 21 E.3.19. 20 E.3. gard.41. Temps E.1. ibidem 128. 35 H. 6. 45. 7 H.6.11. Vide Prær. Reg. cap.6. 13 H.3.gard.147. Stanf. Prær. 26, 27.

(b) 27 H.6. gard. 118. F.N.B. 143. m. 19 E.3 judgment 123. 45 E.3.16.

(c) 47 E.3. tit. action ſur le ſtatute 38. and the Books aboveſaid.

And ſo note a diverſity, when the Ward is married by the Anceſtor, or by a Raviſher, and when by the Gardian himſelf. (a) For if the Anceſtor marry his heir apparent infra annos nubiles, and dieth; in this caſe, if the marriage be diſſolved by diſagreement, either of the ward or of his wife, the Gardian ſhall have the marriage of him. (b) And ſo it is if a Raviſher marry a Ward infra annos nubiles, and the marriage is diſſolved, ut ſupra, the Gardian ſhall have the marriage. If the heir male in Ward of the age of ten years be married without the conſent of the Lord, he may tender unto the heir infra annos nubiles a marriage, albeit he be ſo married; and if he refuſe, and agree to the former marriage, the Lord ſhall have the forfeiture of his marriage, as it hath been holden. But otherwiſe it is (c) (ſaith Littleton) where the Gardian himſelf marrieth the Ward, ut ſupra. And the reaſon of the diverſity is, becauſe in this caſe the Gardian had once the marriage of him, but ſo had not he in either of the other caſes: and it is a Maxim in Law, Quod Dominus non maritabit pupillum niſi ſemel.

It appeareth upon conſideration of all the books aforeſaid, that where the Anceſtor marrieth his heir apparent within the age of conſent, and dieth, the Infant ſtill being within the age of conſent, the Lord may take the Infant (if he will) into his poſſeſſion, in reſpect the Infant may diſagree to the marriage; and if the Infant be detained from him, he ſhall recover him in a Writ of raviſhment of Ward, and thereupon have the infant delivered to him. (d) But if the Anceſtor marrieth his heir apparent infra annos nubiles, and dieth, his heir being infra annos nubiles, and after age of conſent the heir agreeth to the marriage; neither the King nor the Lord ſhall have the marriage, for now it is a marriage ab initio, and there needs no other marriage.

(d) 7 H.6.11. adjudge in the book at large.

Sect. 106.

¶ EN meſme le maner eſt, ſi le Gardein luy marie, & la feme devie, eſteant l'enfant deins lage de xiiii. ans, ou xxi.

IN the ſame manner it is, if the Gardian marry him, and the wife die, the Infant being within the age of 14. years, or 21.

¶ This Littleton adeth, becauſe he ſpake in the Caſe next before of a diſagreement by the Infant; here he ſaith, that if the wife die, the Infant being within the age of Conſent.

Sect. 107.

¶ ET que tiel enfant poit diſagreer a tiel mariage, quant il vient al age de xiiii. ans, il eſt prove per les parolx del Statute de Merton, cap. 6. que iſſint dit:

AND that ſuch Infant may diſagree to ſuch marriage, when he comes to the age of 14. years, it is proved by the words of the Statute of Merton, cap. 6. which ſaith thus:

De dominis qui maritaverint illos quos habent in cuſtodia ſua villanis, vel aliis, ſicut burgenſibus, ubi diſparagentur, ſi talis hæres fuerit infra 14. *annos, & talis ætatis quod matrimonio conſentire non poſſit, tunc ſi parentes illi conquerantur, dominus amittat cuſtodiam illam uſque ad ætatem hæredis, & omne commodum quod inde receptum fuerit convertatur ad commodum hæredis infra ætatem exiſtentis, ſecundum diſpoſitionem parentum, propter dedecus ei impoſitum. Si autem fuerit* 14. ans & ultra, *quod conſentire poſſit, & tali matrimonio conſenſerit, nulla ſequatur pœna.*

¶ *Eſtatut de Merton.* So called becauſe the Parliament was holden at Merton.

¶ *Et que tiel enfant poit diſagreer, &c. il eſt prove, &c.* Note, the time of diſagrement is ſet down by Act of Parliament, and ſo obſerved by Littleton, who ſeeks no other proof therein then by the Law of England. Merton ca. 6.

¶ *Vbi diſparagentur.* Diſparagement, Diſparagatio, cometh of the Verb Diſparago, and that of diſpar, and ago.

Now it is neceſſary to be underſtood what diſparagements there be for the which the heir may refuſe.

And of ſuch diſparagements there be four kinds. The firſt propter vitium animi, as an Ideot, non compos mentis, a Lunatique, &c. The ſecond propter vitium ſanguinis. As firſt a Villein. 2. Burgenſis. 3. The ſon or daughter of a perſon attainted of treaſon or felony, albeit pardoned, for the blood is corrupted. 4. A Baſtard. 5. An Alien, or the child of an Alien. Burgenſis is a man of trade, as an Haberdaſher, a Draper,

Bracton lib. 2. fol. 91. Britton fol. 169. Fleta lib. 1. cap. 12. Mirror cap. 2. ſect. 17. Rot. Parl. 18 E. 1. fol. 9. The daughter of Nevil married to the ſon of Tho. of Weyland after his attainder.

And ſo it is proved by the ſame Statute, that there is no diſparagement but where he which is in Ward is married within the age of 14 years.

Draper, or the like, (and this agreeth with the Civil Law, Patricii cum plebeiis matrimonia ne contrahant:) whereof Glanvil speaketh thus, Si vero fuerit filius burgensis, ætatem habere tunc intelligitur, quando discretè sciverit denarios numerare, & pannos ulnare, & alia paterna negotia similiter exercere.

The third, propter vitium corporis. As first, de membris; having but one hand, one foot, one eye, &c. Secondly, Deformity; as to look aliquint, a crample, halt, lame, decrepit, crooked, &c. Thirdly, Privation; as blind, deaf, dumb, &c. Fourthly, Disease horrible; as leprosy, palsy, dropsy, or such like diseases. Fifthly, great and continual Infirmity; as a consumption, and such like. Sixthly, Impotency to have children, in respect either of age past children, or so tender years as there is too great disparity, or for natural disability or impediment, or such like. Seventhly, Defloured of her virginity.

1 E.6. cap.12.

The fourth kind of disparagement was propter jacturam privilegii, &c. as to marry the heir to a widow, whereby he should by reason of the Bigamy have lost the benefit of his Clergy, whereby he might save his life: but now the exception of Bigamy in that case is ousted by the (d) statute. And Littleton saith, that there be many other disparagements which are not specified in the said statute, for those two mentioned are put but for examples. In a word, it must be competens maritagium absque disparagatione.

(d) Vide Sect.109. F.N.B. 149.

¶ *Si talis hæres fuerit infra* 14. *annos, & talis ætatis quod matrimonio consentire non possit, &c.* Note, albeit the Ward where he is disparaged may disagree at his age of fourteen years, yet the Law doth so abhorr the odious dealing of the Gardian, to whom the custody of the heir is committed, and his horrible profanation of honourable marriage, the onely ligament of mens Inheritances, as it inflicteth a great punishment upon the Lord in this case, albeit the marriage be not perfect, but avoidable by disagrament.

¶ *Tunc si parentes illi conquerantur.* Littleton in the next Section expounded these words in this manner, viz. Si parentes conquerantur, i. Si parentes inter eos lamententur: que est tant adire, que si les Cosens de tiel infant ont cause de faire lamentation ou complaint pur le hont fait lour Cosen issint disparage, quel est in maner un hont a eux. Parens est nomen generale ad omne genus cognationis. See more of this in the next Section.

¶ *Dominus amittat custodiam illam usque ad ætatem hæredis; & omne commodum quod inde receptum fuerit convertatur ad commodum hæredis, &c.* Here followeth the penalty.

First, amittat custodiam, that is, the whole benefit of the Wardship. But in this case if the Gardian hath granted the wardship of the Land to another bona fide, and after the heir is disparaged, the Grantee shall not forfeit his interest: for the statute is, (Dominus amittat custodiam.)

Secondly, Et omne commodum quod inde receptum fuerit convertatur ad commodum hæredis, secundum dispositionem parentum. These words are expounded by Littleton, and need no farther explanation. Now where Readers upon this statute have put a case, that if the Tenant hath issue a daughter, his wife enseint with a son, and dieth, the Lord doth disparage the daughter before the age of twelve years, the son is born, the daughter disagrees, the son dieth, the daughter within the age of fourteen, she shall be in ward again. This case is not warranted by this statute, for this statute extends not to the heirs female.

Vide the second part of the Institutes. Merton cap.5,6. 35 H.6.53.

If the Tenant make a lease to A. for life, the Remainder to B. in fee, the Tenant for life surrenders upon condition, B. dieth, his heir within age, the Lord disparageth the heir, Tenant for life entreth for the condition broken and dieth; the heir shall be out of Ward, for that he claimeth as heir to one man. But if after the disparagement lands descend from another Ancestor to the Ward so disparaged, he shall be in Ward for those lands.

If two Joyntenants be of a Ward, and the one disparageth the heir, both shall lose the Wardship, for the words be, & omne commodum, &c.

¶ *Si autem fuerit* 14. *annorum & ultra, &c. nulla sequatur pœna.* By which it appeareth (as Littleton observeth) that there is no disparagement but where the Ward is married within the age of fourteen.

Britton fol. 169. acc.

Sect. 108.

5 H.3.

¶ *Estatute de Magna Charta.* Though it be in form of a

¶ Nota que il soloit estre question, coment ceux

Note, it hath been a question, how these words shall be pu-

parolx ſerront entendes, Si parentes conquerantur, &c. *Et il ſemble a aſcũs, q̃ conſideront leſtatute de Magna Charta, que voit, Quod hæred' maritentur abſque diſparagatione, &c. ſur quel cel Statute de Werton ſur tiel point eſt foundue, Que nul action pott eſtre pꝛis ſur cel Statute, entant que il ne fuit unques view ne oye q̃ aſcun action fuit pozt ſur cel Statute de Werton pur cel diſparagement enuers le Gardeine pur ceſt matter abandit, &c. Et ſi aſcun action puiſſoit eſtre pꝛiſe ſur tiel matter, il ſerra entendue aſcun foits eſtre miſe en ure. * Et nota que ceux parolx ſerront entendes, Si parentes conquerantur, id eſt, ſi parentes inter eos lamententur: que eſt tant adire, que ſi les Couſins de tiel Enfant ont cauſe de faire lamentation ou complaint enter eux pur le wont fait a lour Couſin iſſint diſparage, quel eſt en maner un wont a eux; donques puit le pꝛochein Couſine a que underſtood, (*Si parentes conquerantur.*) * And it ſeemeth to ſome, who, conſidering the Statute of *Magna Charta*, which willeth, *Quod hæredes maritentur abſque diſparagatione, &c.* upon which this Statute of *Merton* upon this point is founded, That no action can be brought upon this Statute, inſomuch as it was never ſeen or heard that any Action was brought upon the Statute of *Merton* for this diſparagement againſt the Gardian for the matter aforeſaid, &c. And if any Action might have been brought for this matter, it ſhall be intended, that at ſome time it would have been put in ure. * And note, that theſe words ſhall be underſtood thus, *Si parentes conquerantur, id eſt, ſi parentes inter eos lamententur:* which is as much to ſay, as, if the Couſins of ſuch Infant have cauſe to make lamentation or complaint amongſt themſelves for the ſhame done to their Couſin ſo diſparaged, which in a manner is a ſhame to them; then may the next Couſin to whom

Charter, yet being granted by aſſent and Authority of Parliament, Littleton here ſaith it is a Statute. Vide Lib. 8. the Princes caſe.

This Parliamentary Charter hath divers appellations in Law. Here it is called Magna Charta, not for the length or largeneſſe of it, (for it is but ſhort in reſpect of the Charters granted of pꝛivate things to pꝛivate pꝛſons now adayes, being Elephantinæ Chartæ;) but it is called the great Charter in reſpect of the great weightineſs and weighty greatneſs of the matter contained in it in few words, being the fountain of all the fundamental Laws of the Realm; and therefore it may truly be ſaid of it, that it is Magnum in parvo. It is in our Books called Charta libertatum, & Communis libertas Angliæ, or Libertates Angliæ; Charta de libertatibus, Magna Charta, &c. And well may the Laws of England be called Libertates, quia liberos faciunt. Magna fuit quondam Magnæ reverentia Chartæ. Bracton 414 & 291. Fleta lib. 2. cap. 48. & lib. 3. cap. 3. Mirror cap. 2. Sect. 18. Britton fol. 177. b.

The Statute of Magna Charta is but a confirmation or reſtitution of the Common Law, as in the Statute called Confirmatio chartarum, Anno 25 E. 1. it appeareth by the opinion of all the Juſtices; and in 5 H. 3. tit. Mord. 53. Magna Charta is there vouched, for there it appeareth that King John had granted the like Charter of renovation of the ancient Laws. 25 E. 1. 5 H. 3. Mord. 53. Matth. Paris, 246, 247, 318.

This Statute of Magna Charta hath ben confirmed aboue 30 times, and commanded to be put in execution. By the Statute of 25 E. 1. c. 2. judgments given againſt any points of the Charters of Magna Charta, or Charta de Foreſta, are adjudged void. And by the Statute of 42 E. 3. c. 3. if any Statute be made againſt either of theſe Charters, it ſhall be void. 25 E. 1. cap. 2. 42 E. 3. cap. 3.

¶ *Sur le ſtatute de Magna Charta le ſtatute de Merton eſt foundue ſur*

ſar tiel point, viz. Quod hæredes maritentur abſque diſparagatione.

¶ *Foundre.* So as Magna Charta is the foundation of other Acts of Parliament. This Act extendeth as well to females as to males.

¶ *Nul action poet eſtre priſe ſur cel ſtatute, intant que il ne unques fuit view ou oye, &c. Et ſi aſcun action puiſſoit eſte priſe ſur ceſt matter, il ſerra intend a aſcun foits eſtre miſe in ure.*

Vide Petitiones coram domino Rege in Parliamento, tol. 3. 18 E. 2.

Hereby it appeareth how ſafe it is to be guided by judicial precedents, the rule being good. Periculoſum exiſtimo quod bonorum virorum non comprobatur exemplo. And as Uſage is a good Interpreter of Laws, ſo Non-uſage, where there is no example, is a great incouragement that the Law will not bear it; for ſaith Littleton, If any action might have been grounded upon ſuch matter, it ſhall be intended that ſometime it ſhould have been put in ure. Not that an Act of Parliament by Non-uſer can be antiquated or loſe his force, but that it may be expounded or declared how the Act is to be underſtood.

39 H. 6. 39. per Aſhton.
6 Eliz. Dier 229.
23 Eliz. Dier.
Nullum breve de errore de judicio in 5. port. quia nullum breve reperitur.
3 E. 3. 50. 11 H. 4. 7. & 38.

¶ *Si parentes conquerantur.* Of this ſufficient hath been ſaid before.

¶ *Si les Couſins.* Here Littleton expounded Parents to be his Couſins; under which name of Couſins Littleton includeth Uncles and other Couſins, who when the Father is dead are in loco parentum.

Vide Leſtatute de Marlebridge, cap. 17. In cuſtodia parentum.

¶ *Ont cauſe a faire lamentation, &c.* Note, if they have cauſe to make lamentation, it ſufficeth, though they never complain.

¶ *Pur le hont fait a lour couſin.* For when their Couſin is diſparaged in his marriage, it is not only a ſhame and infamy to the heir, but in him to all his bloud and kindred.

¶ *Donques poit le procheine couſin a que le enheritance ne poet diſcender enter, & ouſter le Gardein in Chivalry.*

This is worthy the obſervation, for the words of the ſtatute are general, ſecundum diſpoſitionem parentum, and the conſtruction thereof ſhall be according to the reaſon of the Common Law; for the next couſin to whom the inheritance cannot deſcend ſhall enter, and ouſt the Gardian, and ſhall be in place of a Gardian, as it is in caſe of a Gardian in Docage.

¶ *Et ſil ne voile, un auter couſin del enfant poet ceo faire.* Still purſuing the reaſon of the Common Law in caſe of Gardian in Docage.

¶ *Et les iſſues & profits prender al uſe del enfant, &c.* This is ſo evident as it needeth no explanation.

¶ *Ou auterment lenfant deins age poet enter luy meſme, & ouſte le gardein.* If none of the Couſins aforeſaid will enter, then the heir himſelf may enter. In all which the reaſon of the Common Law is purſued. But what if the heir be diſparaged, and the next of kin doth enter, and when the heir cometh to 14 he agreeth to the marriage? yet ſhall not this give any advantage to the Lord, for that he had loſt the Wardſhip before.

Sect.

Sect. 109.

¶ Of this ſufficient hath been ſaid before.

¶ ITem multz auters divers diſparagements y ſont, que ne ſont ſpecifies en meſme le-ſtatute. Come ſi l'heire que eſt en gard eſt mary a un que nad forſq; un pie, ou forſq; un maine, ou q; eſt deforme, decrepite, ou ayant horrible diſeaſe, ou grand & continual infirmitie: Et (ſi ſoit heire male) ſi ſoit mary a feme que eſt paſſe lage denſanter. Et multz auters cauſes de diſparagements ſont. Sed de illis quære, car il eſt bon matter dapprender.

ALſo there be many and divers other diſparagements, which are not ſpecified in the ſame Statute. As if the heir which is in Ward be married to one which hath but one foot, or but one hand, or which is deformed, decrepit, or having ſome horrible diſeaſe, or great and continual infirmity. And (if he be an heir male) if he be married to a woman paſt the age of Child-bearing. And there be other cauſes of diſparagement. But inquire of them, for it is a good matter to underſtand.

Sect. 110.

¶ ET des heires males que ſont deins lage de 21. ans apres le mort lour anceſtor, nient maries, en tiel cas le ſeir avera le mariage de tiel heire, & avera temps & ſpace de tender a luy convenable mariage ſans diſparagement deins ſi le temps de 21. ans. Et eſt aſcavoir, q; l'heire a tiel cale poit eſlier ſil voit be mary ou non: mes ſi le Sr̃ que eſt appel Gardein en Chivalry a tiel heire tender convenabl' mariage deins lage de 21. ãs ſãs diſparagement, & l'heire ceo refuſe, & ne ſoy marie deins le dit age,

AND of heirs males which be within the age of 21. years after the deceaſe of their Anceſtor, and not married, in this caſe the Lord ſhall have the marriage of ſuch heir, and he ſhall have time and ſpace to tender to him covenable marriage without diſparagement within the ſaid time of 21. years. And it is to be underſtood, that the heir in this caſe may chuſe whether he will be married or no: but if the Lord which is called Gardian in Chivalrie tenders to ſuch heir covenable marriage within the age of 21. years without diſpa-

¶ *DE tender a luy convenable mariage, &c.* But it is in the election of the Lord, whether for the ſingle value the Lord will tender a marriage or no: for he ſhall have the ſingle value without any tender. Lib.6. fol. 70. Lo. Darcies caſe. Vide Britton fol.169.

And of this there needeth no other explication. The value of the marriage of ſuch an heir is according to the valuation by lawfull triall, or as much as another had before offered to give for the ſame without fraud and covin. Merton cap.6. 18 E.3.18.

¶ *Le heire en tiel caſe poit eſlier ſil voit eſte marie, ou non, &c.* And ſo on the other ſide, though there be a tender made of a covenable Marriage without diſparagement: yet the heir may refuſe: for in every marriage there

there muſt be a free conſent.

¶ *Si tiel heire.* That is, if ſuch an heir to whom a tender hath been made by the Lord, and by whom a refuſall hath been made, if ſuch an heir afterwards marrieth another within age, he ſhall forfeit double the value; but if he before any tender marrieth himſelf within age, he ſhall pay but the ſingle value of the marriage.

Neither the ſingle value nor the double value ſhall be recovered againſt the Heir, but after his full age: but for both theſe the Lord hath a double remedy; viz. an Action, as is aforeſaid, or the Lord may retain the Land after full age for his ſatisfaction of both; with this difference, that in the caſe of the ſingle value the taking of the profits ſhall not be accounted parcel of the value, but as a gage or pledge till the heir do ſatisfy him of the ſingle value; but in caſe of the double value, the perception of the profits ſhall be taken in ſatisfaction of the double value; for the ſtatute of Merton which giveth the forfeiture ſaith, Dominus teneat terram, &c. per tantum tempus quod inde percipere poſſit duplicem valorem maritagii: which words (quod inde, &c.) prayeth that the taking of the profits ſhall go in ſatisfaction; but in caſe of the ſingle value, untill the heir doth ſatisfy the Lord of the ſame.

Stat. de Merton cap.6. 2 E.2. acc. ſur leſtat.43. 3 E.2. ibid.27. 16 E.3. ib.14. 18 E.3 18. Temps E.1. acc. ſur leſtat. 43 E.3.21. 27 H.8.4. Stat. de Merton cap.7. 35 H.6. tit. gard. 71. Lib.6. fol.71. Lord Darcies caſe.

No forfeiture of marriage is given by the ſaid ſtatute of Merton of an heir female, as appeareth by the ſaid Act; neither at the Common Law could the Lord have holden the land of the heir female after fourteen years for the value.

donques le Gardeine aũra l'value del mariage del tiel heire male: mes ſi tiel heire luy ñ marie deins lage de 21. ans encoũter la volunt le Gardeine en Chivalrie, donqꝫ le Gardein aũa le double value del mat̃ per force de le ſtat̃ de Merton avantdit, come en ñ leſtat̃ eſt compriſe pluis a pleine.

ragement, and the heir refuſeth this, and doth not marry himſelf within the ſaid age, then the Gardian ſhall have the value of the Marriage of ſuch heir male: but if ſuch heir marrieth himſelf within the age of 21. years againſt the will of the Gardian in Chivalry, then the Gardian ſhall have the double value of the Marriage by force of the Statute of *Merton* aforeſaid, as in the ſame Statute is more fully at large compriſed.

Sect. III.

¶ *Per Caſtle gard. Wardum Caſtri, ſeu Caſtle-gardum, ſeu Caſtri-gardum.* He that holdeth by Caſtle-gard holdeth by Knights Service, but not by Eſcuage: for Eſcuage is due when the King maketh a voyage Royall out of this Realm, (as hath been ſaid) and the Tenant maketh default; but Caſtle-gard is to be done within the Realm, and without any voyage Royall.

Lib.4. fol.88. in Lutterels caſe. Lib.6. fol.20.2. Gregories caſe. 19 R.2. gard.195.

Alſo a certain term is appointed for the Service of the Tenant that holdeth by Eſcuage, but no certain term by Law for him that holdeth by Caſtle-gard. Vide in the Title of Grand Serjeanty, Sect. Hereof come

¶ Item divers Tenants teignont de lour Seigniors p̃ ſervice de Chivaler, & uncore ils ne teignont per Eſcuage, ne paieront Eſcuage: come ceux que teignont de lour Seigniors per Caſtle garde, ceſt aſtavoire, a garder un Tower del Caſtle lour Seignior, ou un huis, ou un auter lieu del Caſtle, per reaſonable garnithment, quant lour Seigni-

Alſo divers Tenants hold of their Lords by Knights Service, and yet they hold not by Eſcuage, neither ſhall they pay Eſcuage. As they which hold of their Lords by Caſtle-ward, that is to ſay, to ward a Tower of the Caſtle of their Lord, or a Door, or ſome other place of the Caſtle, upon reaſonable warning, when their Lords hear that the

oꝛs oyont que enemies voylent vener, ou ſont venus en Engleterre. Et en pluſoꝛs auters cales home poit tener per ſerbice de Chivaler, & uncoꝛe il ne tient per Eſcuage, ne payera Eſcuage, ſicome ſerra dit en le Tenure per Gꝛaund Serjeantie. Mes en touts cales ou home tient per ſerbice de Chivaler, tiel ſerbice trait al Seignioꝛ garꝺ & mariage.

enemies will come, or are come in England. And in many other caſes a man may hold by Knights Service, and yet he holdeth not by Eſcuage, nor ſhall pay Eſcuage, as ſhall be ſaid in the Tenure by Grand Serjeantie. But in all caſes where a man holds by Knights Service, this Service draweth to the Lord Ward and Marriage.

by fealty and ſuit of Court, if I grant over the ſervices of this Tenant, the ſuit is gone, becauſe the Grantee hath not the Manoꝛ. (c) But if the Caſtle be wholly ruinated, ſi Caſtrum ſit penitus dirutum, yet the Tenure remaineth by Knights Service, and it goeth in benefit of the Tenant, as to the garding of the Caſtle untill it be re-edified. But ward and marriage belongeth to the Lord in the mean time. Foꝛ Littleton in the end of this Section putteth it foꝛ a generall rule in all caſes; where a man holdeth by Knights Service, it draweth ward and marriage.

(c) Lib.4. fol.88. Lutterel's caſe. 3 H.8. Bendloes, Capels caſe. 4 E.3.55.

If the Tenant make default in garding of the Caſtle, the Lord may diſtreine foꝛ it, and recover ſatisfaction in dammages.

¶ *Per reaſonable garniſhment.* This warning muſt be given by the Lord oꝛ ſome other foꝛ him, and the Tenant need not to ſtir untill he have ſuch warning.

¶ *Enemies.* Which is to be underſtood of any manner of enemies whatſoever. And though Littleton ſpeaks of enemies, yet it ſeemeth that to keep a Caſtle in time of inſurrection and rebellion (albeit in propriety of ſpeech Rebels are no enemies) is a Tenure by Knights Service. Vide Hill. 8 E.1. Midd. Rot.86.

¶ *Voylent vener.* Foꝛ preparation is to be made upon warning, before the Enemy be come indeed into England. This appeareth to be in time of hoſtility and war, oꝛ foꝛ preparation therefoꝛe. But a Tenure to keep a Caſtle in time of peace onely is no Knights ſervice.

If the Tenant by Caſtle-gard do ſerve the King in his War, he ſhall be diſcharged againſt the Lord, according to the quantity of the time that he was in the Kings hoſt.

Fleta ſpeaketh of an old word called Wardwite, and (ſaith he) ſignificat quietanciam miſericordiæ, in caſu quo non invenerit quis hominem ad Wardam faciendam in Caſtro. Fleta lib.1. cap.42.

Caſtellani, oꝛ Conſtabularii caſtri, foꝛ Keepers oꝛ Conſtables of a Caſtle. Vide Mag. Chart. cap. 19. 20 W.1. cap.7. Bract. lib.5. fol.363. Fleta lib.2.cap.43.

¶ *A garder un Tower del Caſtle, &c.* A Tower, oꝛ a Dooꝛ, oꝛ a Bꝛidge, oꝛ a Dconce, oꝛ ſome other certain part of the Caſtle; foꝛ the Tenure muſt be certain. And this may be done by the Tenant himſelf, oꝛ his Deputy. Magna Chart.cap.20.

¶ *Del Seignior.* Foꝛ it cannot be of a Caſtle of another.

Lord and Tenant by Caſtle-gard, the Lord granteth over his Seigniozie to another, (a) the Caſtle-gard is gone, becauſe the grantee hath not the Caſtle. (b) Foꝛ the ſame reaſon it is, that if one holdeth of me, as of my Manoꝛ of D. (a) Temps E.2. tit. Aſſ.399. 31 E.1. tit. Aſſ.441. (b) 17 E.3.65.72. 4 E.3.42.

Sect. 112.

¶ Et ſi un tenant que tient de ſon Seignioꝛ per ſerbice de entire fee de Chivaler moꝛuſt, ſon heir donc eſteant de plein age, ſ. de 21. ans,

And if a Tenant which holdeth of his Lord by the ſervice of a whole Knights fee dieth, his heir then being of full age, ſ. of 21 years, then

¶ *Reliefe, Relevium.* This woꝛd is derived from the oꝛiginal beꝛoꝛe. Vide Sect.103.

Nota, Relief (a) is no ſerbice, but an impꝛoꝛement of the ſerbice, oꝛ an incident to the ſerbice, foꝛ the which the Lord may diſtrein, but cannot habe an Action of Debt; but (a) Temps E.1. relief 13. 41 E.3.22. 4 E.2. Avowry 210. 7 H.6.13. 22 H.8. Rot.528. 34 E.1. Avowry 233.

but his Executors or Adminiſtrators may have an Action of Debt, and cannot diſtrain.

(b) Stat. de 1 E.2. de militibus. Vide lib.9. fol.124. Anth. Lowes caſe.

And it (b) is to be underſtood that Feodum militis, a Knights Fee, conſiſteth of twenty pound land; and he payeth for his Relief, for a whole Knights Fee, the fourth part of his fee, viz. five pound, and ſo according to the Rate.

Baronia, a Barony, or a Barons Fee, conſiſteth of thirteen Knights Fees, and the third part of a Knights Fee, which amounteth to four hundred Marks per annum; and the Baron for an entire Barony payeth for his Relief an hundred Marks, which is the fourth part of the value of his Barony.

donque le Seignior avera C. ſ. pur reliefe, & del heire celuy que tient per le moietie dun fee de Chivaler L. ſ. & de celuy que tient per l' quart part de fee dun Chivaler 25. ſ. & ſic que pluis, pluis; & que meins, meins.

the Lord ſhall have C. s. for a Relief, and of the heir of him which holds by the moiety of a Knights Fee 50.s. and of him which holds by the fourth part of a Knights Fee 25. s. and ſo he which holds more, more; and he which leſſe, leſſe.

Comitatus, an Earldom, or an Earls Fee, conſiſteth of a Barony, and the third part of a Barony, which includeth twenty Knights fees, amounting to four hundred pound land per annum; and he payeth for his Relief, for an entire Earldom, the fourth part of his Revenue, and that is an hundred pound. All which appeareth by the ſtatute of Magna Charta, cap. 2. made in the ninth year of Henry the third, at which time there was neither Duke, Marquels nor Viſcount in England, as before is ſaid. But there be Preſidents in the Exchequer, that a Dukedom, conſiſting of two Earldoms, viz. eight hundred pound land by the year, payeth two hundred pound, and a Marquiſate, conſiſting of two Baronies, viz. eight hundred Marks land per annum, and of an Earldom and a half, payeth two hundred Marks for his Relief. What the Viſcount ſhould pay in certain, I have not heard. Before the making of the ſtatute of Magna Charta the King had rationabile relevium of Noblemen, and it was not reduced to any certainty; yet ought it to have been reaſonable, and not exceſſive.

Glanvil lib.9. cap. 4 6. Bracton lib.2. fol. 83. Britton fol. 178. Ockam 42. F.N.B. 83.256. Fleta lib.3. cap.17. Magna Charta, cap.2.

I have ſeen the Record of a Charter made in 20 H.6. to Henry Beauchampe, Earl of Warwick, whereby he was created King of the Iſle of Wight, to him and the heirs males of his body: his relief was incertain, and not limited by the ſtatute of Magna Charta.

Vide Bracton fol.84. 14 H.4. in recordo longo. 10 H.7.19. 20 E.3. Aſſ.122. tit. Avowry 126. 18 Aſſ. pl. ultimo, 22 E.3.8.

It is to be obſerved that the words of the ſtatute of Magna Charta, Hæres Comitis de Comitatu integro, & hæres Baronis de Baronia integra, &c. Now, what an entire Earldom and an entire Barony is, hath been declared before.

It is alſo to be obſerved, that at and before the ſtatute of Magna Charta all Earldoms and Baronies were derived from the Crown, and were holden of the King in capite, and the King would not ſuffer them to be divided or ſevered. And ſuch entire Earldoms and entire Baronies are within the Statute; but at this day Earls and Barons are without ſuch Earldoms and Baronies of the Kings gift in chief. For at the creation of an Earl he hath ſometimes an Annuity granted unto him, and ſometimes nothing; ſo as ſuch Earls and Barons ſo created are clearly out of the Statute of Magna Charta, and are to pay ſuch reliefs as other men that hold of the King in capite. For as the heir of a Knight ſhall not pay relief, unleſſe he hath a Knights fee, &c. ſo neither the Earle nor Baron ſhall pay any relief by this Statute, unleſſe he hath an Earldom, &c. or Barony, &c.

16 E.3. Eſchange 2. 46 E.3. Forfeiture 18.

¶ *Son heire de pleine age, ſc. de* 21. *ans.* And yet in ſome caſe the heir ſhall pay relief when he was within age at the time of the death of his Anceſtor. As if a man holdeth lands of the King by Knights Service in capite, and of a common perſon other lands by Knights Service, and dieth, his heir being within age; the King hath all in Ward, by his Prerogative, untill the full age of the heir. In this caſe the heir ſhall pay relief to the other Lord, for that the King had the Wardſhip of body and lands: and the Lord upon every Diſcent ought to have either Wardſhip or Relief.

24 E.2.24. 26 H.8. 32 H.8. cap.2. in fine.

1 E.3.6. Pl. Com.229. 33 E.3. tit. gard. Stathom.

But if there be Lord and Tenant by Knights ſervice, and the Tenant dieth, his heir being within age, the Lord waſteth his Wardſhip, as he may, and taketh himſelf to his Seigniory; in this caſe the Lord ſhall not have relief at his full age, becauſe he might have had the Wardſhip of the body and land. Lord and Tenant of two Manors by divers Tenures by Knights Service, the Tenant is diſſeiſed of the one, and the Diſſeiſor dieth ſeiſed, and the Tenant dieth ſeiſed of the other, his heir within age, the Lord ſeiſeth the body and lands of that Manor, and after the heir at his full age recovereth the other Manor againſt the heir of the Diſſeiſor; he ſhall pay relief for that Manor: and ſo one Lord of the heir of one Tenant ſhall have both Wardſhip during his minority, and Relief at his full age.

¶ *Son*

¶ *Son heire.* (k) And yet the ſucceſſor of a Biſhop or Abbot may pay relief by preſcription or grant.

If the Tenant infeoffeth his heir apparent by colluſion, and dieth, (l) his heir of full age; it is a queſtion in our Books, whether he ſhall have relief either by the Common Law, or by the Statute of Marlebridge, cap. 6. But now the Statute (m) of 13 Eliz. c. 5. hath cleared that queſtion, and that the Lord ſhall have relief where the conveyance is made to any perſon by colluſion, &c.

(k) 3 E. 3. 13. 76. 8 R. 2. relief 14. 3 H. 4. 2. 2 E. 3. Avowry 124.
(l) 39 E. 3. tit. Reliefs 24 E. 3. 24 E. 3. Relief 11. Bracton lib. 2. 85.
(m) 13 Eliz. cap. 5.

Sect. 113.

This is evident, and needeth no explanation.

¶ Item home poit tener ſon tre de ſon Sr̃ per le ſervice de deux fees de Chivaler, & donque lheire, eſteant de pleine age al temps de mort ſon anceſtor, paiera a ſon Sr̃ x. l. pur reliefe.

Alſo a man may hold his Land of his Lord by the ſervice of two Knights fees, & then the heir, being of full age at the time of the death of his Anceſtor, ſhall pay to his Lord x. pound for relief.

Sect. 114.

¶ Nota, ſi ſoit ail, pier, & fits, & la mere mort uſt vivant le pier de le fits, & puis laiel que tient la terre p Service de Chivaler morust ſeiſie, & la terre diſcendiſt al fits la mere, come heir al aiel, q eſt deins age: en ceſt cas le Sr̃ avera le garde de la terre, mes nemy le garde del corps del heire, pur ceo que nul ſerra en garde de ſon corps a aſcun Sr̃ vivant ſon pier, pur ceo que le pier durant ſon vie auera le mariage de ſon heire apparant, & nemy le Sr̃. Autrement eſt ou le pier eſt mort vivant la mere, lou le terre tenus en Chi-

Note, if Grandfather, father, and ſon, and the mother dieth living the father of the ſon, and after the Grandfather which holds his Land by Knights Service dieth ſeiſed, and his land deſcends to the ſon of the mother, as heir to the Grandfather, who is within age: In this caſe the Lord ſhall have the Wardſhip of the land, but not of the body of the heir, becauſe none ſhall be in Ward of his body to any Lord, living his father, for the father during his life ſhal have the marriage of his heir apparent, and not the Lord. Otherwiſe it is where the father dyeth living the mother,

¶ *Fitz.* yet the Father ſhall have the marriage of his Daughter if ſhe be his heir apparent; and Littletons reaſon extendeth to the daughter, for that (ſaith he) the Father ſhall have the Wardſhip of his heir apparent, within which words the daughter is included, ſo long as ſhe continueth heir apparent.

Fleta lib. 1. cap. 6. 16 E. 3. diſſeiſin 6. 21 E. 1. gard. 154. 8 E. 2. treſp. 235. F. N. B. 143. Ambroſia Gorges caſe, lib. 6. fol. 22.

¶ *Le Seignior avera le gard del terre.* Note, that albeit in this caſe the Law doth give the cuſtody of the body to the father, and barreth the Lord thereof, yet the Lord ſhall have the Wardſhip of the Land by force of the Tenure at the firſt creation thereof. And ſo it is, if the Father marrieth his heir within age, and dieth, yet the Lord ſhall have the Wardſhip of the land.

¶ *Vivant ſon pier.* This doth not extend to any collateral heir, but onely to the ſon or daughter being heir apparent: for albeit a man ſhall have an Action of treſpaſſe, Quare conſanguineum & hæredem cepit, and albeit the words be, Cujus maritagium ad ipſum pertinet, becauſe the well beſtowing of his

9 E. 2. 18 E. 3. 25. 29 Aſſ. 35. 29 E. 3. 17. 31 E. 3. barr. 237.

his heir apparent in marriage is a great eſtabliſhment of his houſe; yet that is to be underſtood as againſt a wrong-doer, but not againſt a Gardian in chivalry. And the mother ſhall

32 E.3. Gard. 32.
39 E.3.17.
31 H.6.55.12 H.4.16.
F.N.B. 143. 31 E.3. Br. 357. 9 E.4.53.

valrie diſcendiſt al fits de part ſon pier, &c.

where the land holden in Chivalrie deſcends to the ſon on the part of the father, &c.

have the like Writ for taking away of her ſon and heir apparent: and yet the mother ſhall not barr the Lord by Knights ſervice of his Wardſhip of the body, as Littleton here ſaith: Qui tamen ex filia tua naſcitur in poteſtate tua non eſt, ſed patris ejus.

Vide Fleta lib.1. cap.6. See W.2. cap.35.

¶ *A ſcun Seignior.* But the caſe there is Lord, & Feme Tenant by Knights Service of a Carue of land, the Feme maketh a Feoffment in Fee upon condition, and taketh the Lord to husband, they have iſſue a ſon, the wife dieth, the iſſue entreth for the condition broken, the Lord entreth into the land as Gardian by Knights ſervice, and maketh his Executors, and dieth: in this caſe the Executors ſhall have the Wardſhip of the land during the minority of the heir, but not the Wardſhip of the body: for albeit the Lord claimeth to have a double intereſt in the Wardſhip of the body, one as Lord, and another as Father; yet as Father, and not as Lord, in judgment of Law, he ſhall have the wardſhip of the body of his ſon and heir apparent, in reſpect of nature, which was before any wardſhip in reſpect of Seigniories by Knights Service began; and that Wardſhip by reaſon of nature cannot be waved, and claim made in reſpect of the Seigniory. And the Executors of the father ſhall not have ſuch a Wardſhip which the Teſtator had as father, neither can ſuch a Wardſhip be forfeited by outlawry, becauſe it is due to the father in reſpect of priority of nature.

33 H.6.55. lib.7. fol.13. in Calvins caſe. Vide Fleta lib.1. c.12. Sect. Cum Parr. de feodo, &c.

¶ *De ſon heire apparent.* And therefore if the father be attainted of felony, &c. then cannot the ſon or daughter be an heir apparent, becauſe the bloud is corrupted betwixt them, and conſequently in the life of the father, his ſon in that caſe ſhall be in Ward.

A woman ſeiſed of lands in fee holden by Knights ſervice taketh husband an Alien, and hath iſſue, and the wife dieth; the iſſue ſhall be in ward, and the father ſhall not have the cuſtody of him, for that in the eye of the Law he is not his heir apparent, as Littleton here ſpeaketh.

Sect. 115.

This Section is an addition to Littleton, and therefore I paſſe it over; and the rather, for that the ſaid Statute of 4 H.7. is become of no force, for that by the Statute of 27 H.8. cap.10. all uſes are transferred into poſſeſſion.

¶ *Nota, ſi home ſoit ſeiſie de Terre que eſt tenus per Service de Chivaler, & fait feoffment en fee a ſon uſe, & morust ſeiſie del uſe, ſon heire deins age, & nul volunt per luy declare, le Seignior avera briefe de droit de gard de corps, & del Terre, ſicome Tenant uſt devie ſeiſie del demeſne. Et ſi le heire ſoit de pleine age al temps del morant ſon anceſtor, en tiel caſe il payera reliefe, ſicome il fuſſoit ſeiſie del demeſne. Et ceſt per leſtatut de Anno 4 H.7. Cap.17.*

NOte, If a man be ſeiſed of land which is holden by Knights ſervice, and maketh a feoffment in fee to his own uſe, and dieth ſeiſed of the uſe, his heir within age, and no Will declared by him, the Lord ſhall have a Writ of Right of the Wardſhip of the body and land, as if the Tenant had died ſeiſed of the Demeſne. And if the heir be of full age at the time of the deceaſe of his Anceſtor, in this caſe he ſhall pay relief, as if he had been ſeiſed of the Demeſne. And this is by the Statute of 4 *H.* 7. *Cap.*17.

Sect.

Sect. 116.

¶ Nota, il y ad Gardein en droit en Chivalry, & Gardein en fait en Chivalrie. Gardein en droit en Chivalrie eſt, lou le Seigniour p cauſe de ſon Seigniory eſt ſeiſie de gard de Terres & del heire, ut ſupra: Gardein en fait en Chivalrie eſt, lou en tiel caſe le Seigniour apres ſon ſeiſin graunt per fait ou ſauns fait le Gard des Terres, ou del heire, ou dambideux, a un auter; per force de quel grant le Grauntée eſt en poſſeſſion: donque eſt le Grauntée appell Gardein en Fait.

NOte, there is Gardian in Right in Chivalrie, and Gardian in Deed in Chivalrie. Gardian in Right in Chivalrie is, where the Lord by reaſon of his Seigniory is ſeiſed of the Wardſhip of the Lands and of the Heir, *ut ſupra:* Gardian in Deed in Chivalry is, where in ſuch caſe the Lord after his Seiſin grants by Deed, or without Deed, the Wardſhip of the Lands, or of the Heir, or of both, to another; by force of which Grant the Grantee is in poſſeſſion: then is the Grantee called Gardian in Fait, or Gardian in Deed.

¶ HEre Littleton dividеth Gardian in Chivalry, into Gardian in Right, and Gardian in Fait. And this is evident, and needeth no explanation.

¶ *Per fait ou ſauns fait.* Here Littleton affirmeth, that the Wardſhip of the body may be granted over without Deed; and herein note a diverſity betwеen an original Chattel of a thing that properly lieth in grant, and a Chattel derived out of a Freehold of any thing that lieth in grant. As for example, if a man make a Leaſe for years of a Villein, this cannot be done without Deed, neither can the Leſſee aſſign it over without Deed, becauſe it is derived out of a Freehold that lieth in grant: but the Wardſhip of the body is an originall Chattell, during the minority, derived out of no Freehold, and therefore as the Law createth it without Deed, ſo it may be aſſigned over without Deed.

12 E.3. tit. Grant 59. 7 E.3.63. 26 E.3. 65. 28 E.3.96. 14 E.3. Act ſur Leſt.17. 25 E.3.40. 31 E.3. vouch. 5. 46 E.3.25. 20 E.4.16. 12 H.4.19. 5 H.7.17.36. 22 El.Dier 371. 35 H.8. Br.tit. Grant 85.

A Corporation aggregate of many cannot make a Leaſe for years without Deed, in reſpect of the quality of the Incorporation, but their Leſſee may aſſign it over without Deed.

36 H.8. tit.Grant B. 152. 22 H.6.34. 19 H.6.33.

If an Advowſon be holden by Knights Service, and the tenant dieth, his heir being within age, the Lord cannot grant the Wardſhip of the Advowſon without Deed, becauſe it is derived out of an Inheritance that lieth in grant, and paſſeth not by Livery: for Jus præſentandi eſt incorporale: and ſo (albeit there be diverſity of opinion in our Books) is the Law taken at this day.

24 E.3.69.70. 5 E.3.58. 43 E.3.15. 5 H.7.36. 14 H.7.16. 15 H.7.8. Bract.366.368.246. 43 E.3.1.6. 5 H.7.37. 11 H.6.4. 6 H.7.3. 18 H.8. 16 El. Dier 323.

CHAP. 5. *Sect.* 117.

Socage.

¶ *Tenure in Socage.* Agriculture or tillage is of great account in Law, as being very profitable for the Commonwealth, wherein the goodneſſe of the habit is beſt known by the priuation: For by laying of Lands uſed in tilth to paſture, ſix main inconveniences do daily increaſe. Firſt, Idleneſſe, which is the ground and beginning of all miſchiefs. 2. Depopulation and decay of Towns: For where in ſome Towns 200 perſons were occupied, and liued by their lawful labours, by converting of Tillage into Paſture there haue been maintained but two or three herdmen: and where Men haue been accounted ſheep of Gods Paſture, now become Sheep men of theſe Paſtures. 3. Husbandry, which is one of the greateſt Commodities of the Realm, is decayed. 4. Churches are deſtroyed, and the ſeruice of God neglected by the diminution of Church-liuings, (as by decay of tithes, &c.) 5. Injury and wrong is done to Patrons and Gods Miniſters. And 6. The defence of the Land againſt forrein enemies is enfeebled and impaired, the bodies of husbandmen being more ſtrong and able, and patient of cold, heat and hunger, then of any other.

Mirror cap. 1. ſect. 3.

4 H. 7. cap. 19. Lib. 4. Tirringhams Caſe fol. 39. & 4 H. 7. cap. 12.

¶ TEnure en Socage eſt, lou le Tenant tient de ſon Seignior ſon tenement p certein ſerbice pur touts maners de ſerbices, iſſint que les ſerbices ne ſont pas ſerbices de chibaler. Sicome lou home tient ſon terre de ſon Seignior per fealty & per certeine rent p touts maners de ſerbices: ou lou home tient per homage & fealtie & certeine rent pur touts maners de ſerbices: ou lou il tient per homage & Fealty p touts maners de ſerbices: car homage per ſoy ne fait pas ſerbice de Chibaler.

TEnure in Socage is, where the Tenant holdeth of his Lord the tenancy by certain ſervice for all manner of ſervices, ſo that the ſervice be not Knights Service. As where a man holdeth his Land of his Lord by Fealty and certaint Rent, for all manner of ſervices: or elſe where a man holdeth his Land by Homage, Fealty, and certain Rent, for all manner of ſervices; for Homage by it ſelf maketh not Knights ſervice.

The two conſequences that follow of theſe inconueniences are, firſt the diſpleaſure of Almighty God; and ſecondly, the ſubverſion of the Polity and good Government of the Realm: and all this appeareth in our Books. And the Common Law (a) giveth arable land (which anciently is called Hyde & Gaine) the preheminency and precedency before Meadows, Paſtures, Woods, Mines, and all other grounds whatſoever: and * averia carucæ, the beaſts of the plough, haue in ſome caſes more priuiledge then other cattel haue. And amongſt the Romans agriculture or tillage was of high eſtimation, inſomuch as the Senators themſelves would put their hand to the plough: and it is ſaid, That never proſpered tillage better then when the Senators themſelves ploughed, (ſuch force hath the example of Superiors:) whereof three famous Romans in their ſeueral kinds ſpake.

(a) 20 E. 3. Admeaſurement 8. 14 Aſſ. 21. 24 E. 3. 25.

* Mirror. Bracton fo. 217. Fleta lib. 2. cap. 41. Regiſt. orig. 97. Ockam 38, 39. 4 E. 3. 1. 2. 18 E. 2. tit. action ſur le ſtat. 45. Temps E. 1. Avowry 230. 29 E. 3. 16, 17. Cic. lib. 1. Offic.

Omnium rerum ex quibus aliquid exquiritur nihil agricultura melius, nihil uberius, nihil dulcius, nihil libero homine dignius.

Virgil. lib. 1. Georg.

O fortunatos nimium, ſua ſi bona nôrint,
Agricolas! quibus ipſa procul diſcordibus armis
Fundit humo facilem victum juſtiſſima tellus.

Seneca in Epiſt.

Nullum laborem recuſant manus quæ ab aratro ad arma transferuntur, &c. Fortior autem miles ex confragoſo venit; ſed ille unctus & nitidus in primo pulvere deficit. But now let us peruſe our Authors words.

¶ *Socagium.*

¶ *Socagium.* Littleton in this Chapter Sect.119. fetcheth this word from the original. Socagium idem eſt quod ſervitium ſocæ, & ſoca idem eſt quod caruca, s. un ſoke ou un carue.

And Bracton agreeth herewith. Dicitur ſocagium (ſaith he) à ſocco, & inde tenentes dicuntur ſocmanni (b), eo quod deputati ſunt tantummodo ad culturam. And Beneth ſignifieth the ſervice of plough and cart. It is to be obſerved, that in the Book of (c) Domeſday, Land holden by Knights Service was called Tainland, and Land holden by Socage was called Reveland, which appeareth in that it is ſaid there, Hæc terra fuit terra regis Edwardi Taineland, ſed poſtea converſa eſt in Reveland. And in that Book they that held in Socage were called by ſeveral names: as Sochemanni or Sokemanni, which ſtill continueth; ſometime * Coleberti, i. qui tenent in liberum ſocagium per redditum; and ſometime they are called Radchenеſtres, i. liberi homines, qui tamen arabant, hercibant, falcabant, metebant, &c. And here it appeareth how neceſſary it is, that words be fetched from their originals; and our Author eſt verus Etymologus both in this and in many other places in his (d) three Books. And it is to be obſerved once for all, that the legall termination of (agium) in compoſition ſignifieth ſervice or duty: as homagium, the ſervice of the man; Eſcuagium, ſervitium ſcuti; (e) Socagium, ſervitium ſocæ; Hidagium, the duty to be paid for a hide or plough-land: and ſo of cornagium, coragium, carnagium, cariagium, burgagium, villenagium, and guidagium, (which one deſcribeth thus) quod datur alicui, ut tuto conducatur per loca alterius, and the like.

Bracton lib.2. fol.77.
(b) Glanvil lib.7.c.2.9. & 11. & lib.9. cap.4.
Fleta lib.1. cap.8. & lib.3. cap. 14. & 16.
Britton fol. 164.
(c) Domeſday.
Herefordſc.
Vide devant, Sect. 1.
Sudru.
Wendeford.
Weſceſterſc.
* Mich. 10 E.3. Coram rege, Wilts in Theſaur.
(d) For Etymologies vide Sect.95, 154, 164, 204, 234, 267, 268, &c.
(e) Fleta lib.3. cap.14.
Bracton lib.2. cap.16.
Britton fol. 164.

¶ *Iſſint que les ſervices (f) ne ſont pas ſervices de Chivaler.* And in the next Section he ſaith, and every tenure that is not a tenure in Chivalry, is a tenure in Socage: Ex donationibus autem feoda militaria vel magnam Serjeantiam non continentibus, oritur nobis quoddam nomen generale, quod eſt Socagium. Here Littleton ſpeaketh of Tenures of common perſons; for grand Serjeanty is not Knights Service, and yet it is not a tenure in Socage, as ſhall be ſaid hereafter. Alſo here he meaneth temporall ſervices, and not Frankalmoigne, as by the examples he put is manifeſt, and as in his proper place ſhall appear more at large. Alſo here Littleton ſpeaketh of Socage largely taken, and ſo called ab effectu, that is, all Tenures that have the like effects and incidents belonging to them as Socage hath, are termed tenures in Socage, albeit originally ſervice of the plough was not reſerved: as if originally a Roſe, a pair of gilt Spurs, a Rent, and ſuch like were reſerved; or that the Tenants in Condemnatos ultrices manus mittant, ut alios ſuſpendio, alios membrorum detruncatione, &c. puniant; theſe are ſaid to be tenures in Socage ab effectu, for that there ſhall be like Gardian in Socage, like relief, and ſuch other effects and incidents as a tenure in Socage hath, and are ſo termed to diſtinguiſh the ſame from Knights Service. May, the worſt Tenure that I have read of is of this kind, as to hold lands to be Ultor ſceleratorum condemnatorum, ut alios ſuſpendio, alios membrorum detruncatione, vel aliis modis juxta quantitatem perperrati ſceleris puniat, (that is) to be a Hangman or Executioner. It ſeemeth in ancient times ſuch Officers were not Voluntaries, nor for lucre to be hired, unleſſe they were bound thereunto by Tenure. And ſo note, that ſome Tenures in Socage are named à cauſa, and ſome and the greater part ab effectu.

(f) Mirror cap.2. ſect.18.

Fleta ubi ſupra.

Ockam, cap. quo per ſolam conſuetudinem, &c.

Ockam, fol.31. a.& b.

¶ *Car homage de ſoy ne fait ſervice de Chivaler.* But it is a preſumption, where homage is due, that the land is holden by Knights Service, as hath been ſaid.

Sect. 118.

¶ Item hõe poit teñ de ſon ſñr per fealty tñ, & tiel tenure eſt tenure en ſocage. Car theſcun tenure que neſt pas tenure in chivalry, eſt tenure en ſocage.

Alſo a man may hold of his Lord by fealty only, and ſuch tenure is tenure in Socage: for every tenure which is not tenure in Chivalry, is a tenure in Socage.

Of this ſufficiently hath been ſaid before.

Sect. 119.

¶ Et il eſt dit, que la cauſe pur que tiel tenure eſt dit & ad le noſme de tenure in Socage,

AND it is ſaid, that the reaſon why ſuch Tenure is called and hath the name of tenure in Socage

¶ *Temps de memory.* Time of memory is, when no man alive hath had any proof

Cap. Burgage, Sect. 170.

Mirror cap. 2. Sect. 18.
Vide 19 E. 2. Avowry. 224.
3 E. 2. accon. fur leſt. 24.
10 E. 3. 24.
20 E. 3. Avowry 124.
39 E. 3. 17. 39 Aſſ. p. 3.
20 Aſſ. 1.

proof to the contrary, nor hath any conuſance to the contrary, as ſhall be hereafter ſaid in his proper place. And of neceſſity this change hereafter ſpoken of muſt be before time of memory, for within time of memory the ſervices of the plough cannot be changed into money by conſent of the tenant, and the deſire of the Lords, *viz.* into an annual Rent, neither by releaſe nor confirmation nor other conveyance, ſo long as the Seigniory remaineth, as ſhall be ſaid in his due place.

Cap. Confirmation, Sect. 539.

¶ *Devoient vener ove lour ſokes.* The plough is named propter excellentiam, but the ſkele, and the ſith, for the reaping in harveſt, & ſuch like, are alſo included. For as Carucata terræ, a plough Land, may contain houſes, mills, paſture, meadow, wood, &c. as pertaining to the plough; ſo under the ſervice of the plough all ſervices of tillage or husbandry are included.

4 E. 3. 161. 6 E. 3. 283.

¶ *Uncore le noſme de Socage demurt.* Although the cauſe whereupon the name of Socage firſt grew be taken away; yet the name remains the ſame it hath been, and is uſed to diſtinguiſh this tenure from a tenure by Knights Service. Nomina ſi neſcis perit cognitio rerum. Et nomina ſi perdas certè diſtinctio rerum perditur. Therefore the names of things (as Littleton here teacheth) are for avoiding of confuſion diligently to be obſerved.

eſt ceo, Quia ſocagium idem eſt quod ſervitium ſocæ, & ſoca idem eſt quod caruca, s. un ſoke ou un carue. Et en antient temps devant le limitation de temps de memorie, grand part de les tenants que tiendront d lour Seigniors per ſocage deboient bener ove lour ſokes, chelcun de les dits tenants pur certein iours per an, pur arer & ſemer les demeſnes le Seignior: & pur ceo que tielx oberages fueront fait pur le biber & ſuſtenance de lour Seigniors, ils fueront quits envers lour Seigniors d touts maners de ſervices, &c. Et pur ceo que tielx ſerbices fueront faits ove lour ſokes, tiel tenure fuit appel tenure en ſocage. Et puis apres tiels ſerbices fueront changes en deniers per conſent des Tenants, & per deſire des Seigniors, s. en un annuell rent, &c. Mes uncore le noſme de Socage demurt, & en divers lieux les Tenants uncore font tiels ſerbices ove lour ſokes a lour Seigniors: iſſint que touts maners d tenures q ne ſont pas tenures p ſerbice de Chibaler ſont appels tenures de ſocage.

is this, becauſe *Socagium idem eſt quod ſervitium Socæ, & Soca idem eſt quod caruca*, &c. a ſoke or a plough. In ancient time, before the limitation of time of memory, a great part of the Tenants which held of their Lords by Socage ought to come with their ploughs, every of the ſaid tenants for certain days in the year, to plow and ſow the demeſne of the Lord. And for that ſuch works were done for the livelihood and ſuſtenance of their Lord, they were quit againſt their Lord of all manner of ſervices, &c. And becauſe that ſuch ſervices were done with their ploughs, this tenure was called Tenure in Socage. And afterward theſe ſervices were changed into money by the conſent of the Tenants, and by the deſire of the Lords, *viz.* into an annual rent, &c. But yet the name of Socage remaineth, and in divers places the Tenants yet do ſuch ſervices with their ploughs to their Lords: ſo that all manner of Tenures which are not tenures by Knights Service are called Tenures in Socage.

Sect. 120.

¶ ITem ſi home tient ď ſon Seignior per Eſcuage certeine, ſ. e tiel ſorme, quant leſcuage curge, e eſt aſſeſſe per Parliament a greinder ſumme ou meinder ſumme, que le tenant paiera a ſon Seignior ſorſque demy marke pur Eſcuage, e nient pluis ne meins, a quel graund ſumme, ou a quel petite ſumme q̄ leſcuage curge, &c. tiel tenure eſt tenure en Socage, e nemy ſerbice de Chivalrie. Mes lou le ſumme que le tenant paiera pur leſcuage eſt non certeine, ſ. lou il poit eſtre q̄ l' ſumme q̄ le tenant paiera pur leſcuage a ſon Seignior poit eſtre a un foits le greinder, e a auter foits le meinder, ſolonque ceo que eſt aſſeſſe, &c. donques tiel tenure eſt tenure per ſerbice de Chivaler.

ALſo if a man holdeth of his Lord by Eſcuage certain, s. in this manner, when the Eſcuage runneth, & is aſſeſſed by Parliament to a greater or leſſer ſumme, that the Tenant ſhall pay to his Lord but half a Mark for Eſcuage, and no more nor leſſe, to how great a ſumme, or to how little the Eſcuage runneth, &c. ſuch Tenure is Tenure in Socage, and not Knights Service. But where the ſumme which the Tenant ſhall pay for Eſcuage is uncertain, s. where it may be that the ſumme that the Tenant ſhall pay for Eſcuage to his Lord may be at one time more, and at another time leſſe, according as it is aſſeſſed, &c. ſuch tenure is tenure by Knights Service.

¶ E *Scuage certein* is not in rei veritate ſervitium Scuti, which is to be done by the body of a man, but it is ſervitium Crumenæ, of money, which is to be drawn out of the purſe, and that is in effect a Tenure in Socage. Wherein it is to be obſerved, that the ſervice of payment of money is the more baſe, and leſſe profitable for the commonwealth in this caſe: and hereof ſomewhat hath been ſaid before in the Chapter of Eſcuage, Sect. 98, 99.

If a man hold by Homage, Fealty and Eſcuage, s. by an half penny, when Eſcuage runs at forty ſhillings, this is a tenure in Socage, and no Knights Service, for two cauſes.

15 E.2. tit. Avowry 215. 21 E.1. Aſſ. 441. 26 Aſſ. 66. 5 E.3.6.

First, It is Socage Tenure, becauſe of the certainty, for to the Tenure in Socage certa ſervitia do ever belong, ſo as the Husbandman may the rather live in quiet.

5 E.4.128. Vide Rot. Par. 4 E.3. nu.19. Claverings Caſe excellently reſolved in Parliament. Hill. 3 E.2. coram Rege, Rot.34. Agnes Prowicks Caſe.

Secondly, Eſcuage is to be paid at every time when it is aſſeſſed; and here it is not to be paid, but when it amounteth to forty ſhillings.

Sect. 121.

¶ ITem ſi home tient ſa teñ pur paier certeine rent a ſon Seignior pur Caſtle-garde, tiel tenure eſt tenure e Socage. Mes lou l' Tenant doit p

ALſo if a man holdeth his Land to pay a certain rent to his Lord for Caſtle-gard, this Tenure is Tenure in Socage. But where the Tenant ought

¶ HEerein the difference ſtandeth thus. If a Rent be paid for Caſtle-gard, it is clear a Socage tenure, as it is agreed in Lutterels caſe according

Vide Sect. 88, 89.

according to Littletons opinion: but if a ſumme in groſſe or other thing be voluntarily paid or given by the Tenant, and voluntarily received by the Lord in lieu of Caſtle-gard, yet the Tenure by Knights Service remaineth. Vide Sect, 88.89.

Vide lib. 4. fol. 88. in Lutterels Caſe. 19 R. 2. gard. 195. 26 Aſſ. 66. F.N.B. 83. 256. Lib. 6. fol. 20. Gregories Caſe.

luy ñ ou p un auter faire Caſtle-garde, tiel tenure eſt tenure per ſervice de chivaler.

by himſelf or by another to doe Caſtle-gard, ſuch Tenure is Tenure by Knights Service.

Sect. 122.

¶ IT is called Rent Service, becauſe it is accompanied with ſome corporall Service, as Fealty at the leaſt, in reſpect whereof the Lord may diſtrain for it of common right. See more of this matter in the Chapter of Rents.

¶ Item en touts caſes lou l' tenant tient del Seignior a paier a luy alcun certeine Rent, cel Rent eſt appelle Rent ſervice.

ALſo in all caſes where the Tenant holdeth of his Lord to pay unto him any certain Rent, this Rent is called Rent Service.

Sect. 123.

¶ *EN tiels Tenures en Socage.* If a man be ſeiſed of a Rent charge, Rent ſeeke, Common of paſture, and ſuch like Inheritances, which do not lie in tenure, & dieth, his Heir within age of 14. years; in this caſe the Heir may chuſe his Gardian: but if he be of ſuch tender years as he can make no choice, then (if the Father hath made no diſpoſition of the cuſtody of the child) it were moſt fit, that the next of kin to whom the Inheritance cannot deſcend ſhould have the cuſtody of him. And whoſoever taketh the Rent, &c. the heir ſhall charge him in an account. But if he hold any

Vide le ſtatute de 4 & 5 Ph. & Mar. ca. 8.

¶ Item en tiels Tenures en ſocage, ſil ad iſſue & debie, ſon iſſue eſteãt deins lage d 14. ãs, donques l' prochein amy del heire a q̃ l'heritage ne poit diſcẽdr aver̃ la gard ð la terr̃ & del heir jeſq̃ al age del heir de 14. ans: & tiel Gardein eſt appelle Gardein en ſocage. Car ſi la terre diſcendiſt al heire de pt le pier, donques la mere, ou auter prochein cozen de pt le mere, avera la garde. Et ſi terr̃ diſcendiſt al heire de part la mere, donques le pier, ou le prochein amy de part del pier, avera le garde de tiels terrs ou tenits. Et quant l'heire vient al age de 14. ãs compleat, il poit enter & ouſtre le Gardein en Socage, &

ALſo in ſuch tenures in Socage, if the Tenant have iſſue and die, his iſſue being within the age of 14. years, then the next friend of that heir to whom the inheritance cannot deſcend ſhall have the wardſhip of the land and of the heir untill the age of 14. years: and ſuch Gardian is called Gardian in Socage. For if the Land deſcend to the heir of the part of the Father, then the Mother, or other next Couſin of the part of the Mother, ſhall have the wardſhip. And if Land deſcend to the heir of the part of the Mother, then the Father, or next friend of the part of the Father, ſhall have the wardſhip of ſuch Lands or Tenements. And when the heir cometh to

occupier la terre luy meſm̃, ſil voit. Et tiel Gardein en ſocage ne prendra aſcuns iſſues ou profits de tielx terres ou tenements a ſon uſe demeſne, mes tantſolement al uſe & profit del heire; & del ceo il rendra accompt al heire quant pleaſt al heire, apres ceo que lheire accompliſh lage de xiiii. ans. Mes tiel Gardein ſur ſon accõpt avera allowance de touts ſes reaſonable coſts & expences en touts choſes, &c. Et ſi tiel Gardein marie lheire deins 14. ans, il accõptera al heire ou a ſes Executors de value del marriage, comẽt que il ne priſt riens pur le value del mariage; pur ceo que il ſerra rette ſa folly demeſne, que il luy voiloit marier ſans prender la value del mariage; ſinon que il luy marie a tiel mariage que eſt tant en value come le mariage del heire, &c.

the age of 14. years compleat, he may enter and ouſt the Gardian in Socage, and occupy the Land himſelf, if he will. And ſuch Gardian in Socage ſhall not take any iſſues or profits of ſuch lands or tenements to his own uſe, but only to the uſe and profit of the heir; and of this he ſhall render an account to the heir when it pleaſeth the heir, after he accompliſheth the age of 14. years. But ſuch Gardian upon his account ſhall have allowance of all his reaſonable coſts and expences in all things, &c. And if ſuch Gardian marry the heir within age of 14. years, he ſhall account to the heir or his Executors of the value of the marriage, although that he took nothing for the value of the marriage; for it ſhall be accounted his own folly, that he would marry him without taking the value of the marriage; unleſſe that he marrieth him to ſuch a marriage that is as much worth in value as the marriage of the heir, &c.

Land in Socage; in that caſe the Gardian in Socage ſhall take into his cuſtody as well the Rent charges, &c. as the land holden in Socage, becauſe he hath the cuſtody of the heir.

¶ *Si le tenant ad iſſue, & devie.* The ſame Law it is if the tenant hath no iſſue, but a brother or couſin within age of 14. years, at the time of his death. (a) Alſo this doth extend as well to iſſue female as to iſſue male.

(a) 10 R. 2. Account 132.

¶ *Deins lage de* 14. *ans.* Of this ſufficient hath been ſpoken in the next preceding Chapter.

¶ *Donques le procheine Amy del heire a que le inheritance ne poit diſcender.* The next friend of the heir, &c. Here Amy or friend is taken for the next of bloud; ſo as the effect of it is, the next of bloud to whom the inheritance cannot diſcend; whereby affinity without bloud is excluded.

Glanvil lib. 7. cap. 11. Britton 163. Fleta lib. 1. cap. 9. Stat. de Hibernia, tit. Partition.

¶ *Le procheĩn.* The next.

(b) If there be 2 or 3 brethren, and the youngeſt holdeth land in Socage, and hath iſſue, and dieth, his iſſue within age of 14. years, both the Uncles are in equal degree; and yet the eldeſt ſhall be Gardian, becauſe in equal degree the Law preferreth him. (c) And yet if lands holden in Socage be given to a man and to the heirs of his body, and he dieth, his heir within age, the next couſin of the part of the Father, albeit he be worthier, ſhall not be preferred before the next couſin of the part of the Mother; but ſuch of them as firſt ſeiſeth the heir ſhall have his cuſtody. But if lands be given in Frankmarriage, and the Donees have iſ-

(b) Vide 30 Aſſ. 47.

(c) Pl. Com. Cartels Caſe.

47 H. 3. Gard. 146.

ſue and die, their iſſue within age of 14. years, the next of kin of the part of the Mother ſhall have the cuſtody of the body, and not the next of kin of the part of the Father, albeit he firſt ſeiſed it, becauſe the Mother was the cauſe of the Gift. If a man be ſeiſed of lands holden in Socage of the part of his Father, and of other Lands holden in Socage of the part of his Mother, and dieth, his iſſue being within the age of 14. years; in this caſe ſuch of the next of

of kin of either ſide, as firſt happeth the body of the heir, ſhall have him; but the next of bloud of the part of the Father ſhall enter into the lands of the part of the Mother, and the next of kin of the part of the Mother ſhall enter into the lands of the part of the Father.

(d) F.N.B. 139. b. Regiſt.

(d) If A. be Gardian in Socage of the body and lands of B. within the age of fourteen years, A. ſhall be Gardian in Socage per cauſe de Gard. But an Infant within age, that (e) is not in the cuſtody of another, cannot be Gardian in Socage, becauſe no writ of account lieth againſt an Infant. And herewith agreeth Bract. (f) and yieldeth this reaſon, Alium regere non poteſt, qui ſeipſum regere non novit. And Fleta ſaith, (h) That minor minorem cuſtodire non debet; alios enim præſumitur malè regere qui ſeipſum regere neſcit. And by like reaſon an Ideot, a man non compos mentis, a Lunatick, a man cæcus & mutus, or ſurdus & mutus, or a Leper removed by a writ de Leproſo amovendo, cannot be a Gardian in Socage. But in a caſe of Gard per cauſe de Gard, there lieth an Action of Account againſt A. in the caſe abovesaid.

(e) 7 E. 3. 46. 16 E. 3. ac. 52. 21 E. 3. 8. 31 E. 3. Enfant 9. 17 E. 2. Account 121. 26 E. 3. 63. 10 H. 6. 14. F.N.B. 118.

(f) Bract. lib. 2. fo. 88.

(h) Fleta lib. 1. cap. 10.

¶ *A que le heritage ne poet diſcender.* (i) Nullus hæridipetæ ſuo propinquo vel extraneo periculoſa ſane cuſtodia committatur. Note (k) this word (poet) may or can. (l) And therefore this doth not only exclude an immediate diſcent, but all poſſibility of diſcent. As if a man hath iſſue two ſons by ſeveral Venters, and having lands holden in Socage of the nature of Burgh English, dieth, the younger brother within age of 14. years, (m) the elder brother of the half bloud ſhall not have the cuſtody of the land, becauſe by poſſibility the elder may inherit the Land; for if the youngeſt die without iſſue, and the Land diſcend to an Uncle, the elder brother of the half bloud may be heir unto him: and herewith do agree our ancient Authors. (n) Hæres Sokmanni ſub cuſtodia capitalium Dominorum non erit, ſed ſub cuſtodia conſanguineorum ſuorum propinquiorum, hoc eſt, eorum qui conjuncti ſunt jure ſanguinis, & non jure ſucceſſionis, ex parte quorum non deſcendit hæreditas: & regulariter verum eſt, quod nunquam remanebit aliquis in cuſtodia alicujus, de quo haberi poſſit ſuſpicio, quod velit jus clamare in ipſa hæreditate; & unde ſi plures ſint filiæ & hæredes, & tenere debeant in Socagio, nulla debet eſſe in cuſtodia alterius. (o) And this is contrary to the Civil Law; for, Leges Civiles impuberum tutelas proximis de eorum ſanguine committunt, ſive agnati fuerunt, ſive cognati, unicuique, videlicet, ſecundum gradum & ordinem qui in hæreditate pupilli ſucceſſurus eſt. But this, the Law of England ſaith, eſt quaſi agnum lupo committere ad devorandum.

(i) Lib. Rub. cap. 70.

(k) Glanv. lib. 7. cap. 11.

(l) Pl. Com. Carreh Caſe.

(m) Lit. lib. 1. fo. 2, 3.

(n) Bract. lib. 2. fo. 87. Brit. f. 163. b. Flet. l. 1. c. 10. 28 E. 1. Stat. 1. Forteſc. cap. 44.

(o) Forteſc. ubi ſupr. Statut. de Homagio capiendo, temps E. 1.

¶ *Donques la mere.* Note, albeit Land cannot diſcend to the Mother from her Son, (as hath been ſaid) becauſe inheritance cannot aſcend, yet here it appeareth by Littleton, that ſhe is next of bloud, for that none (as it hath been ſaid) can be Gardian in Socage but the next of bloud: and the like is to be ſaid of the Father, as hereafter next appeareth.

¶ *Donques le pier.* By this it appeareth, that the Father in caſe of a tenure in Socage ſhall be Gardian in Socage, and ſhall not have the cuſtody of his eldeſt ſonne in reſpect of his paternal natural cuſtody, (as he ſhall have in caſe of a tenure by Knights Service, as before appeareth) but as Gardian in Socage: and the reaſon of the diverſity is, for that in the caſe of a tenure in Socage, the Father muſt by Law be accountable to the Son, both for his marriage, and alſo for the profits of his Lands, which he ſhould not be, if he had the cuſtody of his eldeſt Son in this caſe as his Father, in reſpect of nature; and the Act of Law never doth any man wrong.

But no Lord or other perſon in reſpect of any tenure by Knights Service or otherwiſe ſhall have the cuſtody of any Child that is heir apparent to his Father, but the Father only during his life, as hath been ſaid before.

It is to be obſerved, that in the Laws of England there are three manner of Gardianſhips, viz. by the Common Law, by Statute Law, and by Cuſtom. By the Common Law there are four manner of Gardians: viz. Gardian in Chibalry, (whom Littleton hath deſcribed before Section 103, &c.) Gardian by nature, as the Father of the eldeſt Son, of whom Littleton hath ſpoken, Sect. 114. Gardian in Socage, treated of by Littleton in this Section, and Gardian per cauſe de nurture: all frequent in (a) our Books. By Statute, viz. the Statute in 4 & 5 Phil. & Mariæ, of women childzen, and that is in two manners; either of the Father or Mother without aſſignation, or of any other to whom the Father ſhall appoint the cuſtody, either by his laſt Will, or by any act in his life-time, whereof you ſhall read at large (b) in Ratcliffs caſe in my Reports.

(a) 8 E. 3. 43. 8 E. 4. 5.

(b) Lib. 3. fol. 57. Ratcliffs Caſe.

(c) 32 E. 3. Gard. 31. 8 R. 2. Gard. 166.

(c) Laſtly, by Cuſtome, as of Orphans by the cuſtome of the City of London, and of other Cities and Boroughs.

¶ *Tantſolement al uſe & profit del heire.* And therefore Gardian in Socage ſhall not forfeit his intereſt by Outlawry or attainder of Felony or Treaſon, becauſe he hath nothing to his own uſe, but to the uſe of the heir.

Alſo

Alſo if the mother be Gardian in Socage, and taketh huſband, and dieth, the huſband ſhall not have this cuſtody by ſurvivour, becauſe the wife had it en autre droit, in the right of the heir. Pl. Com.

A Gardian in Socage ſhall not (d) preſent to a benefice in the right of the heir, becauſe he cannot be accomptable therefore, for that he can make no benefit thereof, for the Law doth abhor ſimony or any corrupt contract for benefices; and therefore in that caſe the heir ſhall preſent himſelf: and Britton ſpeaking of theſe Gardians ſaid well, Les queux Gardeins ſont pluis ſerjeants que Gardeins, (that is) which Gardians are rather ſervants then Gardians. (d) 8 E.2. preſentment 10. 7 E. 39. 27 E.3.89. 29 E.3.5. F.N.B.33. 31 E.3. Eſtoppel 340. Britton 163, 164. Fleta lib.1. cap.10.

¶ *Il rendra account, &c. apres que lheire ad accompliſhe lage de* 14. *ans.* This point hath been much controverted in our Books, and the cauſes of the doubts have been, firſt upon the words of the Statute of (e) Marlebridge, cap. 17. 2. upon the original writ of Account againſt the Gardian in Socage. The words of the Statute be, Cum ad legitimam ætatem pervenerit, ſibi reſpondeat, &c. and legitima ætas, (f) lawful age, is xxi. years. 2. Alſo the writ of Account reciteth the ſaid Statute, Quare cum de communi conſilio regni noſtri proviſum ſit, quod cuſtodes terrarum & tenementorum quæ tenentur in Socagio hæredibus terrarum & tenementorum illorum, cum ad plenam ætatem pervenerint, reddant rationabilem compotum. (g) Whereupon it is gathered, that no action of account did lie againſt the Gardian in Socage at the Common Law, untill the heir be of his lawful age of 21. years. But as to the ſaid legitima ætas, (as the Statute (h) ſpeaketh) or plena ætas, (as the Writ doth render it) are to be underſtood ſecundum ſubjectam materiam, that is of the heir of Socage land, whole lawful and full age, as to the cuſtody or Gardianſhip is 14. And as to the recital of the Statute; (i) it is evident that an Action of Account did lie againſt Gardian in Socage at the Common Law, and that the Statute was made in affirmance or declaration of the Common Law, for the Statute ſpeaketh only De cuſtodia parentum, that is, of a Gardian in Right. But yet an Action of Account lieth againſt him that occupieth the land as Gardian, albeit he be not of the bloud, (as hereafter ſhall be ſaid.) And upon conſideration had of the ſaid Statute and of all the Books, it was adjudged in the Court of Common Pleas, Paſch. 16 Eliz. Rot. 436. according to the opinion of Littleton, that the heir after the age of 14. years ſhall have an action of Account againſt the Gardian in Socage when he will at his pleaſure: and ſo is an ancient queſtion well reſolved. (e) It is called the Stat. of Marlebridge, becauſe the Parliament in 52 H.3. was holden there. (f) 16 E.3. waſt 100. 18 E. 3. 55. 77. 29 E. 3. 5. Vide 32 E.3. Gard. 31. F.N.B. 118. 6 E. 3. 38. (g) 16 E.2. Account 120. 17 E. 2. ibid. 121. (h) 2 E.2. Account 14 E. 3. ibid. 3 Mar. 137. Keilway 131. (i) 18 E.2. Avowry 220. Paſch. 16 Eliz. Rot.436. in communi banco.

Britton was of opinion that the Statute of Marlebridge, which gave the Capias in Account, extended to Gardian in Socage, for he wrote before the Statute of W.2. cap.11. But later Books have over-ruled this point, that no Capias lieth againſt Gardian in Socage, for the Statute extendeth to Bailiffs only. Neither doth the Statute of W. 2. extend to Gardian in Socage, for that ſpeaketh only De ſervientibus, ballivis, camerariis, & receptoribus. Mirror cap.2. ſect.17. Britton fol. 162. b. Fleta lib.2. cap.64. 18 E.2. Avowry 220. 17 E.3.59. Marſh. ca.23. W. 2. cap. 11.

¶ *Mes tiel Gardein ſur ſon account avera allowance de touts ſes reaſonable coſts & expences en touts choſes.* And this is due to all accountants by the Common Law, and ſo it is declared by the ſaid Statute of Marlebridge, Salvis ipſis cuſtodibus rationabilibus miſis ſuis. The ſtat. of Marlbr. intended by Litt. is ca.17.

¶ *Allowance.* What other allowances ſhall the Gardian have? If the Gardian receive the Rents and Profits of the Lands, and be robbed of the ſame, whether ſhall he be diſcharged thereof upon his Account? and it ſeemeth that if he be robbed without his default or negligence, he ſhall be diſcharged thereof. As if a Bailiff of a Mano, or a Receiver, or a Factor of a Merchant, or the like accountant be robbed, he ſhall be diſcharged thereof upon his Account; and ſeeing the Gardian ſhall be charged as Bailiff after the heirs age of 14. and be diſcharged upon his account if he be robbed, pari ratione, if he be robbed before the age of 14. But otherwiſe it is of a Carrier, for he hath his hire, and thereby implicitely undertaketh the ſafe delivery of the goods delivered to him, and therefore he ſhall anſwer the value of them if he be robbed of them. Note the diverſity, and ſo it was reſolved * in the Kings Bench. 41 E.3.3. 22 Aſſ.41. 22 E.3. Account 111. 29 Aſſ.28. 3 H.7.4. b. 6 H.7.12. 10 H.7.25. 10 H.6.21. 2 E.4.15. Doct. & Stud.ca.38. fo.130. * Hill. 38 Eliz. inter Woodliefe & Curtis.

So it is if goods be delivered to a man to be ſafely kept, and after thoſe goods are ſtoln from him, this ſhall not excuſe him, becauſe by the acceptance he undertook to keep them ſafely, and therefore he muſt keep them at his peril.

So it is if goods be delivered to one to be kept; for to be kept, and to be ſafely kept, is all one in Law: but if the goods be delivered to him to be kept as he would keep his own, there if they be ſtoln from him without his default or negligence, he ſhall be diſcharged. So if goods be delivered to one as a gage or pledge, and they be ſtoln, he ſhall be diſcharged, becauſe he hath a property in them, and therefore he ought to keep them no otherwiſe then his own: but if he that gaged them tendred the money before the ſtealing, and the other refuſed to deliver them, then for this default in him he ſhall be charged. 29 Aſſ. p. 28.

If A. leave a Cheſt locked with B. to be kept, and taketh away the key with him, and acquainteth 8 E.2. tit. Detinue 50.

quaintetb not B. what is in the Cheſt, and the Cheſt together with the goods of B. are ſtoln away; B. ſhall not be charged therewith, becauſe A. did not truſt B. with them, as this caſe is. And that which hath been ſaid before of ſtealing, is to be underſtood alſo of other like accidents, as ſhipwreck by ſea, fire by lightning, and other like inevitable accidents. And all theſe caſes were reſolved and adjudged in the Kings Bench. * And by theſe diverſities are all the Books concerning this point reconciled.

* Paſch. 43 Eliz. inter Southcote & Bennet in detinue.

Note Reader, it is neceſſary for any that receiveth goods to be kept, to receive them in this ſpecial manner, viz. to be kept as his own, or to keep them at the peril of the owner. But now is Littleton to be farther heard.

¶ *Et ſi tiel gardein marie le heire deins* 14. *ans, &c.* For if he marry the heir after 14. he is out of his cuſtody, and no account ſhall be made therefore.

¶ *Il accounter a a luy.* He ſhall account for the marriage of the heir, viz. for ſo much as any man bona fide had offered for the marriage, or would give in marriage unto him.

¶ *Ou a ſes Executors.* Note that an Infant of the age of 14. may make his will, (as ſome hereupon have collected:) but the meaning of Littleton is, that if after his marriage he accompliſh his age of 18. years, at that time he may make his Teſtament, and conſtitute Executors for his goods and chattels: and the words are ſo to be underſtood as may ſtand with Law and reaſon. Note, Executors could not have an Action of account at the Common Law, in reſpect of the privity of the account; but the Statute of W. 2. cap. 23. hath given the action of account to Executors, the Statute of 25 E. 3. cap. 5. to Executors of Executors, and the Statute of 31 E. 3. cap. 11. to Adminiſtrators.

7 E. 3. 62.
19 E. 3. account 56.
38 E. 3. 7.
31 E. 3. tit. Account 57.

¶ *Que il voile luy marier ſans prender le value.* So as the Gardian ſhall not account only for that which he ſhall receive in this caſe, but for that alſo which he might receive.

3 E. 3. 10.
46 E. 3. Account 40.
2 R. 2. ibid. 45.
6 R. 2. Account 47.

¶ *Si non que il luy marier a tiel mariage que eſt tant en value, &c.* This needeth no explanation.

If the heir in Socage be raviſhed out of the cuſtody of the Gardian, and the Raviſher marrieth the heir, the Gardian ſhall have a Writ of Raviſhment of Ward, and recover the value of the marriage, &c. and ſhall account to the heir for the ſame.

Hill. 3 E. 2. Coram Rege, Rot. 34. Agnes Frowicks Caſe. F.N.B. 139. I. & 140. 26 E. 3. 65. 1 E. 3. 19, 20.

And the Gardian in Socage is bounden by Law that the heir be well brought up, and that his evidences be ſafely kept.

Trin. 1 H. 5. Coram Rege, Rot. 1. Midd.

The Grandmother of the ſon and heir of John Bernevil, who held the Manor of Totington in the County of Midd. in Socage, recovered the heir in a Raviſhment of Ward againſt Simon Chevin, which had married the ſtepmother of the heir, and by rule of the Court the Plaintiff pro nutritura hæredis, & pro cuſtodia evidentiarum, inveniet plegios.

Sect. 124.

¶ *ET ſi aſcun auter home, que neſt pas procheine amy, &c.* If a ſtranger entreth into the Lands of the Infant within age of 14. and taketh the profits of the ſame, the Infant may charge him as Gardian in Socage. And this doth well agree with the Writ of Account againſt a Gardian in Socage: for the words be, Idem B. præfato A. rationabilem compotum ſuum de exitibus

19 E. 2. Avowry 221.
39 E. 3. 16.
41 E. 3. Account 35.
49 E. 3. 16. 18 E. 3. 77.
28 Aſſ. p. 11. Pl. Com. 542.
6 E. 3. 38. F.N.B. 118.

¶ ET ſi aſcun auter home, q̃ neſt procheín amy, occupie les terres ou tenements del heire come gardeín in Socage, il ſerra compell' de render accompt al heire, auxi bien ſi come il fuiſſoit procheín amy: car il neſt pas plée pur luy en briefe daccompt adire, que il neſt procheine amie, &c. mes il reſpondra l' quel

AND if any other man, who is not the next friend, occupies the Lands or Tenements of the heir as Gardian in Socage, he ſhall be compelled to yield an account to the heir, as well as if he had been next friend: for it is no Plea for him in the Writ of Account to ſay, that he is not the next friend, &c. but he ſhall anſwer

ſi

il ad occupie les terres ou tenements come Gardein en Socage ou nemy. Sed quære, ſi apres ceo que le heire ad accompliſh lage de 14. ans, & Gardeine en Socage continualment occupia la terre tanque lheire vient a plein age, ſ. 21. ans, ſi le heire a ſon pleine age avera action Daccompt envers le Gardeine, de temps que il occupia apres les dits 14. ans, come envers Gardeine en Socage, ou envers luy come ſon bayliſe.

whether he hath occupied the Lands or Tenements as Gardian in Socage or no. But *quære*, if after the heir hath accompliſhed the age of 14. years, and the Gardian in Socage continually occupieth the Land untill the heir comes to full age, s. of 21. years, if the heir at his full age ſhall have an action of Accompt againſt the Gardian, from the time that he occupied after the ſaid 14. years, as Gardian in Socage, or againſt him as his Bailiff.

provenientibus de terris & tenementis ſuis in N. quæ tenentur in Socagio, & quorum cuſtodiam idem B. habuit dum præd. A. infra ætatem fuit ut dicitur. And true it is, that in judgement of Law he had the cuſtody of the lands: and he is called Tutor alienus, and the right Gardian in Socage Tutor proprius: & it is no plea for him to deny that he is procheine amy, but he muſt anſwer to the taking of the profits, as Littleton here ſaith.

13 E.3. Account 77. 22 E.3. 11. 41 E.3. Account 35. 10 H.7.7. 4 H.7.6.b. 7 H.7.9.a.

¶ *Sed quære, &c.* This Quære came not out of Littletons quiver, for it is evident that after the age of 14. years he ſhall be charged as Bailiff at any time when the heir will, either before his age of 21. years or after.

6 E.3.38. 32 E.3. Account 60. 7 E.4. F.N.B. 118.

Sect. 125.

¶ ITem, ſi gardein en chivalry face ſes Executors & deby, le heire eſteant deins age, &c. les Executors aderont le garde durant le nonage, &c. Mes ſi Gardein en Socage face ſes Executors, & deby, le heire eſteant deins lage de 14. ans, ſes Executors naderont pas le garde, mes un auter procheine amy, a que le heritage ne poyt my diſcend, avera le garde, &c. Et la cauſe de diverſity eſt, pur ceo que Gardeine en

ALſo, if Gardian in Chivalry make his Executors and die, the heir being within age, &c. the Executors ſhall have the Wardſhip during the nonage, &c. But if the Gardian in Socage make his Executors, and die, the heir being within the age of 14. years, his Executors ſhall not have the Wardſhip, but another the next friend, to whom the inheritance cannot deſcend, ſhall have the Wardſhip, &c. And the reaſon of this diverſity is, be-

¶ A *Son proper uſe.* A Tenant holdeth land of a Biſhop by Knights ſervice, which Seigniory the Biſhop hath in the Right of his Biſhoprick, the Tenant dieth, his heir within age, the Biſhop either before or after ſeiſure dieth; neither the King nor the ſucceſſor of the Biſhop ſhall have the Wardſhip, but his Executors. For albeit the Biſhop hath the Seigniory in auter droit, yet the Wardſhip, being but a Chattel, he hath in his own Right, and a Chattel cannot go in the ſucceſſion of a ſole Corporation, unleſs it be in the caſe of the King.

7 R.2. bre. 634. 40 E.3.14. 2 H.4.23. 10 Eliz. Dier 277. 7 H.4.41. 44 E.3.42.

And yet if a Biſhop have an advowſon, and the Church become void, and the Biſhop die, neither the Succeſſor nor the Executors ſhall preſent, but the King, becauſe it is but a Choſe in Action. And ſo it is in caſe where the King hath Wardſhip: but that

24 E.3.26. 44 E.3. F.N.B. 33. See more of this in the Chapter of Warranty, Sect. 740.

that is a prerogative that belongeth to the King to provide for the Church being void: for where the tenure by Knights Service is of a common person, the Executors of the Tenant shall present where the avoidance fell in the life of the Tenant.

chivalrie ad le garde a ſon proper uſe, & Gardein en Socage nad le garde a ſon uſe, mes al uſe del heire. Et en cas lou le Gardein en Socage deby devant aſcun accompt fait per luy al heire, de ceo le heire eſt ſans remedie, pur ceo que nul briefe dar compt giſt envers les Executors, ſi non pur le Roy ſolement.

cauſe the Gardian in Chivalry hath the wardſhip to his own uſe, and the Gardian in Socage hath not the wardſhip to his own uſe, but to the uſe of the heir. And in this caſe, where the Gardian in Socage dieth before any account made by him to the heir, of this the heir is without remedy, for that no Writ of account lieth againſt the Executors, but for the King only.

31 E.3. account 57. 19 E.3. ibid. 156. 48 E. 3. 2. 2 H.4.13. F.N.B. 117. 19 H.6.5. 4 E.4.25. 43 E.3.21. Lib.11. fo.89.

¶ *Le heire eſt ſauns remedie, &c.* For albeit in an action of account againſt a Gardian in Socage, &c. the Defendant cannot wage his Law; yet in reſpect of the privity of the matters of account, and the diſcharge reſting in the knowledge of the parties thereunto, an action of account neither lieth againſt the Executors of the accountant, nor at the Common Law for the Executors of him to whom the account is to be made, as is aforeſaid: but that is holpen by Statute. (*) It hath been attempted in Parliament to give an action of account againſt the Executors of a Gardian in Socage, but never could be effected.

* Rot. Parl. 50 E.3. nu. 123.

¶ *Si non pur le roy ſolement.* (a) The reaſon of this is, becauſe the Kings treaſure is the ſinews of War, and the honour and ſafety of the King in time of peace, firmamentum belli, & ornamentum pacis; and therefore the death of the party ſhall not bar the King of his treaſure due unto him upon the account, becauſe it is intended that the King was buſied about the publick for the good of the Commonwealth, and had not leiſure to call his accountant to make his account, and nullum tempus occurrit Regi. Littleton ſpeaketh of the Kings Prerogative but twice in all his Books, viz. here, and Sect. 178. and in both places as part of the Laws of England. Prærogativa is (b) derived of præ, i. ante, and rogare, that is, to aſk or demand before-hand, whereof cometh prærogativa; and is denominated of the moſt excellent part; becauſe though an Act hath paſſed both the Houſes of the Lords and Commons in Parliament, yet before it be a Law, the Royal aſſent muſt be aſked or demanded, and obtained: and this is the proper ſenſe of the word. But legally (*) it extends to all powers, preheminences and privileges which the Law giveth to the Crown, whereof Littleton here ſpeaketh of one. Bracton lib. 1. in one place calleth it libertatem, in another Privilegium Regis: (c) Britton (d) (following W. 1.) Droit le Roy: (e) Regiſtr. jus Regium, and jus Regium Coronæ, &c.

(a) Pl. Com. 321. Keyleway 131. Lib. 11. fol. 89.

Vide Sect. 178. Stanf. prær. 32. (b) Forteſcue fol. 45. Rot. Parl. 1 H.4. nu. 188. Pl. Com. 236. Stanf. pl. cor. 162. b. Stanf. præ. 1. 2. b. & 10. b. (*) Stanf. prær. 5. 10.

(c) Britton fol. 27. (d) Weſtm. 1. cap. 50. (e) Regiſt. fol. 61, &c.

Sect. 126.

¶ *Certeine Rent.* A Tenant holdeth of his Lord certain lands in Socage to pay yearly a pair of gilt Spurs, or five ſhillings in money, at the feaſt of Eaſter: In this caſe the Rent is uncertain, and the Tenant may pay which of them he will at the ſaid feaſt; and likewiſe the Tenant may pay which of them he will for Relief: but if he pay it not when he ought, then may the

¶ Item le Seignior de que la terre eſt tenus en Socage, apres le mort ſon Tenant, avera reliefe en tiel forme: Si le tenant tient per fealtie, & certein rent a paier annualment, &c. ſi les termes de paiment

ALſo the Lord of whom the Land is holden in Socage, after the deceaſe of his Tenant, ſhall have reliefe in this manner: If the Tenant holdeth by fealty, and certain Rent to pay yearly, &c. if the termes of

43 E.3. barre 294. 9 E. 4. 36. Bract. lib. 2. fol. 35. Glanvil lib. 9. cap. 4.

ſont

ſont a payer per deux termes del an, ou per quater termes ŏl an, le Seignior avera del heire ſon tenant tant come le rent amount que il paya p an: ſicome le tenant tient de ſon ſeignior per fealtie & x. s. de rent, payable a certeine termes del an, donques lheire paiera al Seignior x. s. pur reliefe, outler les x. s. que il paiera pur le rent.

payment be to pay at two terms of the year, or at 4. terms of the year, the Lord ſhall have of the heir his Tenant as much as the rent amounts unto which he payeth yearly: as if the Tenant holds of his Lord by fealty, and ten ſhillings rent payable at certain terms of the year, then the heir ſhall pay to the Lord ten ſhillings for relief, beſide the ten ſhillings which he payeth for the rent.

Lord diſtrain for which of them he will. But if the Tenure be to attend on his Lord at the feaſt of Chriſtmaſſe, or to pay ten ſhillings, there the Relief muſt be ten ſhillings, becauſe the other cannot be doubled: & ſic de ſimilibus.

¶ *A paier annuelment.* If the Tenant holdeth of his Lord by fealty, and to pay every two or three years ten ſhillings, albeit this be no annual rent, yet ſhall he pay ten ſhillings for Relief: & ſic de ſimilibus.

But it is to be noted, that beſide Relief whereof Littleton here ſpeaketh, there belongeth to a Tenure in Socage of common right, aid, for the making of his eldeſt ſon a Knight at the age of fifteen years, and to marry his daughter at the age of ſeven years.

Vide Sect. 103. F.N.B.82. Weſt. 1. cap.35. 25 E.3. ſtat.5. cap.11.

En meſme le maner eſt, ſi home ſoit ſeiſie de certein terre que eſt tenus en Socage, & fait feoffment en fee a ſon uſe, & morust ſeiſie del uſe, (ſon heire del age de 14. ans, ou pluis) & nul volunt per luy declare; le Seignior avera reliefe del heire, ſicome avant eſt dit. Et ceſt per le ſtatute de Ann. 19 Hen.7. cap.15.

In the ſame manner it is, if a man be ſeiſed of certain Land which is holden in Socage, and maketh a feoffment in Fee to his own uſe, and dieth ſeiſed of the uſe, (his heir of the age of 14. years or more) and no Will by him declared; the Lord ſhall have relief of the heir, as afore is ſaid. And this by the Statute of 19 H.7. cap.15.

This is an addition to Littleton, wherefore I omit it the rather, for that the ſtatute of 19 H.7. is for the cauſe above mentioned become of none effect.

Sect. 127

¶ ET en tiel cas, apres la mort le Tenant, tiel reliefe eſt due al Seignior maintenant, de quel age que le heire ſoit, pur ceo que tiel Seignior ne poit aver le garde de corps ne de terre

AND in this Caſe, after the death of the Tenant, ſuch relief is due to the Lord preſently, of what age ſoever the heir be, becauſe ſuch Lord cannot have the wardſhip of the body nor of the Land of the Heir.

¶ *Maintenant*: and, as Littleton ſaith, he ought not to attend the payment of his Relief according to the dayes of payment of his Rent, but he ought to have his Relief preſently, and for the ſame he may incontinently diſtrain after the death of the Tenant.

16 H.7.4. 18 E.3.26. p.18. Bracton lib. 2. fol.85. dabit hæres una vice redditum ſuum unius anni duplicatum. Britton fol.178. acc. Fleta lib.1. cap.8.

And therefore in the caſe aforeſaid, where the Tenant holdeth by the Rent of five ſhillings, or a pair of gilt Spurs,

Spurs, if the heir be not presently (that is, as presently as conveniently may, all due circumstances considered) after the death of his Ancestour ready upon the Land to pay Relief, the Lord may distrain for which of them he will; and if the Tenant tendred either of them according to the Law, and none for the Lord was ready there to receive it, yet the Lord may distrain for that which was tendred, at his pleasure.

le heire. Et le Seignior en tiel case ne doit attendre a le payment de son reliefe, solonques les termes & jours de payment de rent, mes il doit aver son reliefe maintenant, & pur ceo il poit incontinent distrein apres le mort son tenant pur reliefe.

And the Lord in such case ought not to attend for the payment of his relief, according to the terms and dayes of payment of the rent, but he is to have his relief presently, and therefore he may forthwith distrain after the death of his Tenant for relief.

45 E.3.19. 35 H.6.52. 20 Eliz. Dier 361. Stanf. Prær. 13 b. F.N.B. 256.259.

¶ *De quel age que le heire soit.* And yet it appeareth in our Books, that in this case the King in case of a Tenure in Socage in chief shall not have Primer seisin, unless the heir be of the age of 14. years at the death of his Ancestor; for if he be under that age, he is in the gard and custody of his prochein amy.

But otherwise it is in case of a common person, as here it appeareth. And where in some impressions these words be added (issint que il passa lage de 14. ans,) those words so added are against Law, and no part of Littletons worke.

Sect. 128.

¶ *Un lib. de pepper ou cummin.* Here it is to be observed, that the Lord may reserve pepper or any other things that be exotica, forrein, of the growth of outlandish countreys, or beyond sea, as well as of the growth of England, whereby Navigation (the life of every Island) is imployed. And where Littleton here putteth his case in the disjunctive, if the Tenant doth hold by fealty and one pound of Pepper, or a pound of Cummin, he shall pay for Relief a pound of Pepper, or a pound of Cummin, over and besides the Rent. But if the Tenant holdeth of his Lord by doing of certain worke-dayes in harvest, or to attend at Christmas, or such like, he shall not double the same, for of Corporal service, or labour, or work of the Tenant, no Relief is due, but where the Tenant holdeth by such yearly Rents or profits which may be paid or delivered, whereof Littleton hath put his examples; and by them is manifestly proved that corporal service, work, or labour shall not be doubled in this case.

¶ *En mesme le maner est lou le tenant tient de son Seignior per fealtie & un li. de Pepper, ou Cummin, & le tenant morust, le Seignior avera pur reliefe un lib. de Cummin, ou un lib. de Pepper, ouster le common rent. En mesme le maner est lou tenant tient a payer per an certaine number de Capons, ou de Gallines, ou un paire de Gaunts, ou certeine bushels de frument, & hmodi.*

In the same manner it is where the Tenant holdeth of his Lord by fealty and a pound of Pepper, or Cummin, and the Tenant dieth, the Lord shall have for relief a pound of Cummin, or a pound of Pepper, besides the common rent. In the same manner it is where the Tenant holdeth to pay yearly a number of Capons or Hens, or a pair of Gloves, or certain bushels of Corn, or such like.

¶ *Ou certaine bushels de frument.* Here it appeareth that the Relief of Bushels of corn is to be paid presently, though the Tenant dy in winter before Corn be ripe.

Note,

Note, here are examples put of five natures. 1. Aromatum exoticorum, of ſpices or drugs of out-landiſh growth. 2. Granorum, of Corn of Engliſh growth. 3. Avium villaticarum, of Powltry, as Capons, Hens, &c. 4. Artificiorum, of handicrafts, as a pair of Gloves generally, either of out-landiſh or Engliſh. 5. Aut ſimilium, or ſuch like, (that is) of like out-landiſh growth, or of Engliſh growth, or of Powltry, or of Artifices, out-landiſh or Engliſh; and like herein alſo, that they may be paid or delivered to the Lord every year, or every ſecond or third year, &c.

Sect. 129.

¶ MEs en aſcun caſe le Seignior doit demurrer a diſtreiner pur ſon reliefe jeſque a certeine temps. Sicome le tenant tient de ſon Seignior per un Roſe, ou p un buſhel de Roſes, a paier al feaſt de Natibitie de Saint John Baptiſt, ſi tiel tenant debie en yver, donque le Sſir ne poit diſtr̃ p ſon relefe tãque al temps q̃ les Roſes p le courſe del an poient aũ lour treſſer, &c. & ſic de ſimilibus.

BUt in ſome caſe the Lord ought to ſtay to diſtrain for his relief untill a certain time. As if the Tenant holds of his Lord by a Roſe, or by a buſhel of Roſes, to pay at the Feaſt of St. *John the Baptiſt*, if ſuch Tenant dieth in Winter, then the Lord cannot diſtrain for his relief until the time that Roſes by the courſe of the year may have their growth, &c. And ſo of the like.

¶ *Per le courſe del an.* Lex ſpectat naturæ ordinem: the Law reſpecteth the order and courſe of Nature. Lex non cogit ad impoſſibilia: the Law compels no man to impoſſible things. The argument ab impoſſibili is forcible in Law: Impoſſibile eſt quod naturæ rei repugnat. And here it is to be obſerved, that Littleton puts a diverſity betwæn Corn and Roſes: for Corn will laſt, and therefore the Tenant muſt deliver the Corn preſently, before the time of growth, (as before is ſaid,) and ſo of Saffron, and the like; but Roſes, or other flowers, that are fructus fugaces, cannot be kept, and therefore are not to be delivered till the time of growing: neither is the Tenant driven by Law artificially to preſerve Roſes, for the Law in theſe caſes reſpecteth Nature, and the courſe of the year, as Litdeton here ſaith: Et ars naturam imitatur: & ſic de ſimilibus.

Sect. 130.

¶ ITem ſi aſcun voile demand, pur q̃ home poit tener de ſon Seignior p fealtie tantſolement p touts maners des ſervices, entant que quant le tenant ferra fealtie il jurera a ſon Seignior q̃ il ferra a ſon Sſir touts maners des Services dues; & quant il ad

ALſo if any will aſk, why a man may hold of his Lord by Fealty onely for all manner of Services, inſomuch as when the Tenant ſhall do his Fealty, he ſhall ſwear to his Lord that he will do to his Lord all manner of Services due; and when he hath done Fealty, in

¶ *Quant le tenant ferra fealtie, il jurera a ſon Seignior, &c.* Here it appeareth, that the doing of the fealty is both a performance of his ſervice and of his oath alſo when it is done, for that no other Service is due. And that one oath of fealty is taken of all that hold, and is not to be changed for any novelty or nicety of invention: for Judges anciently and continually have ſuppreſſed innovations, and would in no caſe change the ancient Common Law.

31 E. 3. tit. Gager deliverance 5.
38 E. 3. 1. 42 Aſſ. p. 12.
4 E. 3. ca. 5.
18 E. 3. ca. 4. & 6.
4 H. 4. ca. 2. 2 H. 4. fo. 18.

¶ *Il covient que il doit faire a ſon Seignior aſcun ſervice.* For there can be no tenure without ſome ſervice, becauſe the ſervice maketh the Tenure.

See of this in the Chapter of Fee ſimple, Sect. 4.

¶ *Son eſcheat de la terre.* Eſchaeta is derived of this word Eſchier, quod eſt accidere: For an eſcheat is a caſuall profit, quod accidit Domino ex eventu & ex inſperato, which happeneth to the Lord by chance, and unlooked for. And of this word Eſchaeta cometh Eſchaetor, an Eſcheator, ſo called, becauſe his office is to inquire of all caſuall profits, and them to ſeiſe into the Kings hands, that the ſame may be anſwered to the King.

See more of this in the Chapter of Warranty, Sect.

Lands may eſcheat to the Lord two manner of wayes; one by attainder, the other without attainder. By attainder in three ſorts. Firſt, Quia ſuſpenſus eſt per collum. Secondly, Quia abjuravit Regnum. Thirdly, Quia utlegatus eſt. Without attainder, as if the Tenant dies without heir.

¶ *Ou per caſe auter forfeiture.* As if the land be alienes in Mortmaine, or when Littleton wrote, if the Tenants had erected crolles upon their houſes or Tenements, in prejudice of the Lords, that the Tenants might claim the privilege of the Hoſpitlers, to defend themſelves againſt their Lords, they had forfeited their Tenancies. But ſince Littleton wrote, the Hoſpitlers are diſſolved, and conſequently that forfeiture is gone.

W. 2. cap. 32. Flet. li. 2. ca. 43. & lib. 5. ca. 34. 32 H. 8. ca. 24.

¶ *Ou profit.* As Reliefe, Aid pur file marrier, Aid pur faire fitz chivaler, and the like.

fait fealtie, en tiel caſe nul auter Service eſt due: A ceo il poit eſtre dit, Que lou un Tenant tient ſa Terre de ſon Seignior, il covient que il doit fait a ſon Seignior aſcun Service: car ſi le Tenant ne ſes heires devoyent faire nul maner de Service al Seignior, ne a ſes heires, donque per long temps continue il ſerroit hors de memorie & de remembrance, le quel la terr fuit tenus de le Seignior, ou de ſes heires, ou nemy; & donques pluis toſt & pluis rediment voilont hões dire, que la terre neſt pas tenus del Seignior ou de ſes heires, q auterment: & ſur ceo le Seignior perdra ſon Eſcheat de la terre, ou per caſe auter forfeiture ou profit que il poet aver de le terre. Iſſint il eſt reaſon que le Seignior & ſes heires ont aſcun Service fait a eux, pur prover & teſtifier que la terre eſt tenus de eux.

this caſe no other ſervice is due: To this it may be ſaid, That where a Tenant holds his land of his Lord, it behoveth that he ought to do ſome ſervice to his Lord: For if the Tenant nor his heirs ought to do no manner of ſervice to his Lord nor his heirs, then by long continuance of time it would grow out of memory, whether the Land were holden of the Lord, or of his Heirs, or not; and then will men more often and more readily ſay, that the land is not holden of the Lord, nor of his Heirs, then otherwiſe: and hereupon the Lord ſhall loſe his Eſcheat of the Land, or perchance ſome other forfeiture or profit which he might have of the Land. So it is reaſon that the Lord and his Heirs have ſome Service done unto them, to prove and teſtifie that the Land is holden of them.

Sect. 131.

¶ ET pur ceo que fealty eſt incident a touts maners de tenures forſpris le tenure in Frankalmoign, (ſicome ſerra dit en le tenur̃ de Frankalmoign) & pur ceo que le Seignior ne voiloit al commencement del tenure aver aſcun auter ſervice forſque Fealtie; il eſt reaſon que home poet tener d̃ ſon Seignior per Fealtie tantſolement, & quant il ad fait ſon Fealtie, il ad fait touts ſes ſervices.

AND for that Fealty is incident to all manner of Tenures but to the Tenure in Frankalmoign, (as ſhall be ſaid in the Tenure of Frankalmoign) and for that the Lord would not at the beginning of the Tenure have any other ſervice but Fealty; it is reaſon that a man may hold of his Lord by Fealty only, and when he hath done his Fealty, he hath done all his ſervices.

¶ *Fealtie eſt incident.* Of Incidents there be two ſorts, viz. ſeparable, and inſeparable.

Deparable, as Rents incident to Reverſions, &c. which may be ſevered; inſeparable, as fealty to a reverſion or tenure, which cannot be ſevered: for as all lands and tenements within England are holden of ſome Lord or other, and either mediately or immediately of the King; ſo to every tenure at the leaſt Fealty is an inſeparable incident, ſo long as the Tenure remains, and all other ſervices except Fealty, are ſeverable. But where the Tenure is by Fealty onely, there is no reliefe due, for the cauſe abovеſaid.

Sect. 132.

¶ ITem ſi un home leſſe a un auter p̃ terme d̃ vie terteine terres ou tenem̃ts, ſauns parler de aſcun rent rend̃ a le Leſſor, uncore il ſerra fealtie a le Leſſor, p̃ ceo que il tient de luy. Auxy ſi un leaſe ſoit fait a un hõe pur terme de ans, il eſt dit que le Leſſée ſerra Fealtie a le Leſſor, pur ceo q̃ il tient de luy. Et ceo eſt prove bien p̃ les parols del briefe de Waſt, quant le Leſſor ad cauſe de porter briefe de Waſt envers luy; le quel Briefe dira, q̃ le Leſſée tient les Tenements de le Leſſor pur terme de ans.

ALſo if a man letteth to another Lands or Tenements for term of life, without naming any rent to be reſerved to the Leſſor, yet he ſhall do Fealty to the Leſſor, becauſe he holdeth of him. Alſo if a Leaſe be made to a man for term of years, it is ſaid that the Leſſee ſhall do Fealty to the Leſſor, becauſe he holdeth of him. And this is well proved by the words of the writ of waſt, when the leſſor hath cauſe to bring a writ of waſt againſt him; which writ ſhall ſay, that the Leſſee holds his tenements of the Leſſor for term of years. So the

¶ *Si un home leſſe pur terme de vie, ſauns parler de rent, &c. il ſerra fealty, &c.* Vide Sect. 214.

And the reaſon is, Becauſe there is a Tenure; and Fealty (as hath been ſaid) is incident to all manner of Tenures: & it is to be noted, that the Law for the

the Surety of the Lord, that his Tenant ſhall be faithful and loyall to him, doth create ſuch a ſervice as the Tenant ſhall be bound thereunto by oath.

40 E.3.34. 9 H.6.41. 10 H.6.13. 9 E.4.1. 21 E.4.29. 5 H.5.12. 5 H.7.11.

¶ *Auxi ſi leaſe ſoit fait pur ans, &c. le Leſſee ferra fealty.* For there alſo is a Tenure between them. And Littletons opinion in this caſe is holden for good Law at this day.

Vide Sect.84.

¶ *Et ceo eſt prove bien per les parols del briefe, &c.* Nota, the original writs are (as it were) the foundations and grounds of the Law, and, as it appears here by Littleton, are of great authority for the proof of the Law in particular caſes.

¶ *Pur ceo que il nad ſuer eſtate.* Therefore tenant at will ſhall not do Fealty, (as hath been ſaid before) becauſe the matter of an Oath muſt be certain. The reſt of this Section needs no explication.

Iſſint le briefe proua un tenure enter eux. Mes celuy que eſt tenant a volũt ſolonq; le courſe del common ley ne ferra fealtie, p̃ ceo que il nad alcun ſuer eſtat: mes auterment eſt de tenant a volunt ſolonq; l'cuſtome del manor, pur ceo que il eſt oblige pur faire fealtie a ſon Sr̃ pur deux cauſes; lun eſt p̃ cauſe del cuſtome, & lauter eſt pur ceo q̃ il p̃iſt ſon eſtate en tiel forme pur faire a ſon Sr̃ fealtie.

Writ proves a tenure between them. But he which is Tenant at will according to the courſe of the Common Law ſhall not do Fealty, becauſe he hath not any ſure eſtate: but otherwiſe it is of Tenant at will according to the cuſtome of the Manor, for that he is bound to do Fealty to his Lord for two cauſes; the one is by reaſon of the cuſtom, and the other is for that he taketh his Eſtate in ſuch form to do his Lord Fealty.

CHAP. 6. *Frankalmoigne.* *Sect. 133.*

Bract. lib.2. cap.5. & lib.4. cap.2. Britton fol.164,165. Mirror cap.2. Sect.18. Glanvil lib.7 cap.1. & lib.12. cap.3. & 25. Fleta lib.3. cap.5.

¶ *UN Abbe, Prior, ou auter home de religion, ou de ſaint Eſgliſe.* It is to be obſerved, that of Eccleſiaſtical perſons ſome be regular, and ſome be ſecular. They be called Regular, becauſe they live under certain rules, and have vowed three things, true obedience, perpetual chaſtity, and wilful poverty. And when a man is profeſſed in any of the orders of Religion, he is ſaid to be home de religion, a man of religion, or religious. Of this ſort be all Abbots, Priors, and others of any of the ſaid orders regular. Secular are perſons Eccleſiaſtical; but becauſe they live not under certain rules of ſome of the ſaid orders, nor are Votaries,

21 H.7.39. 29 E.3.14.

¶ TEnant en Frankalmoigne eſt, lou un Abbe ou Prior, ou un autr̃ home de religion, ou de ſaint Eſgliſe, tient de ſon Sr̃ en Frankalmoigne, que eſt adir̃ en Latin, in liberam Eleemoſynam. Et tiel tenure comment̃ adeprimes en auncient temps en tiel forme: Quant un home en auncient temps fuit ſeiſie d̃ certein terres ou tenements en ſon demeſne come de fee,

TEnant in Frankalmoigne is, where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Frankalmoigne, that is to ſay in Latine, *in liberam Eleemoſynam*, that is, in free Almes. And ſuch tenure began firſt in old time: When a man in old time was ſeiſed of certain Lands or Tenements in his Demeſne as of Fee, and of the ſame land in-

40 E.3.29. 8 H.6.23. 7 E.4.12. 12 H.8.8.

¶ de

& de meſmes les terres ou tenements enfeoffa un Abbe & ſon Covent, ou un Prior, &c. a aver & tener a eux & lour ſucceſſors a touts jours en pure & perpetual almoign, ou en Frankalm, ou p tiels parols, A ten de le grantor ou de le feoffor & de ſes hres en Frankalmoign: en tiels caſes les tenements ſont tenus en Frankalmoigne.

feoffed an Abbot and his Covent, or Prior and his Covent, to have and to hold to them and their ſucceſſours in pure and perpetual Almes, or in Frankalmoign, or by ſuch words, To hold of the Grantor or of the Leſſor and his heirs in free Almes: In ſuch caſes the Tenements were holden in Frankalmoigne.

they are for diſtinction ſake called Secular, as Biſhops, Deans and Chapters, Archdeacons, Prebends, Parſons, Vicars, and ſuch like. All which Littleton here includeth under theſe general words, de ſaint Egliſe, of holy Church; and none of theſe are in Law ſaid to be homes de religion, or religious.

Where Littleton ſaith (infeoffa un Abbe & ſon Covent,) his meaning is, that the Abbot onely is infeoffed, for he is onely a perſon capable, and the Covent are dead perſons in Law, and have power of aſſent onely, and that they thereunto aſſent. But ſince Littleton wrote, all Abbies, Priories, Monaſteries, and other religious houſes of Monks, Canons, Friers, and Nuns, &c. have been diſſolved, and their poſſeſſions given to the Crown. See the Statutes of 27 H.8. not printed, but in the abridgment. 31 H.8. cap.13. & 32 H.8. cap.24, &c. Vide Sect.530.

The Eccleſiaſtical ſtate of England, as it ſtandeth at this day, (which is neceſſary for our Student to know) is divided into two Provinces, or Archbiſhoprics, viz. of Canterbury, and of York. The Archbiſhop of Canterbury is ſtiled Metropolitanus & Primas totius Angliæ, and the Archbiſhop of York, Primas Angliæ. Each Archbiſhop hath within his Province Suffragan Biſhops of ſeveral Dioceſſes. The Archbiſhop of Canterbury hath under him within his Province, of ancient foundations, viz. Rocheſter his principal Chaplain, London his Dean, Wincheſter his Chancellor, Norwich, Lincoln, Ely, Chicheſter, Salisbury, Exeter, Bath and Wells, Worceſter, Coventry and Lichfield, Hereford, Landaff, St. David, Bangor, and St. Aſaph, and four founded by King Henry 8. created out of the ruins of diſſolved Monaſteries, (that is to ſay) Glouceſter, Briſtow, Peterborow, and Oxford. The Archbiſhop of York hath under him four, (viz.) the Biſhop of the County Palatine of Cheſter, newly created by K. H. 8. and annexed by him to the Archbiſhoprick of York, of the County Palatine of Durham, Carlile, and the Iſle of Man, annexed to the Province of York by H. 8. but a greater number this Archbiſhop anciently had, which time hath taken from him. The extent of every Dioceſs you may elſewhere read, the which for brevity I here omit. All the ſaid Archbiſhoprics and Biſhoprics of England were founded by the Kings of England, to hold by Barony, as hereafter ſhall be ſaid. * And every Archbiſhop and Biſhop hath his Dean and Chapter, whereof more ſhall be ſaid hereafter. The Archbiſhop of Canterbury hath the precedency, next to him the Archbiſhop of York, next to him the Biſhop of London, and next to him the Biſhop of Wincheſter, and then all other Biſhops of both Provinces after their ancientneſs.

Matth. Parker de vitis Archiepiſcoporum. Linwood. Camdens Britannia. Vide Rot. Parliam. anno 36 H.8. 1 E.6. 5 E.6. &c. Weſtminſter alſo was newly erected a Biſhoprick by H.8. but by Queen Mary it was reſtored to be an Abby, and by Queen Eliz. created a Deanry Collegiate. Cheſter had been anciently a Biſhops See, and long ſince tranſlated to Coventry. 33 H.8. cap.31. Camden ubi ſupra. 26 H.8. firſt fruits and tenths. Vide Sect.137. * Lib.3. fo'.73. Dean and Chap. of Norwich caſe. Vide Sect.134. 201. 31 H.8. cap.10.

Every Dioceſs is divided into Archdeaconries, whereof there be 60. and the Archdeacon is called oculus Epiſcopi; and every Archdeaconry is parted into Deanries, and Deanries again into Parithes, Towns, and Hamlets. And thus much for the better underſtanding of our Author, and how the ſtate Eccleſiaſtical ſtandeth at this day, ſhall ſuffice. Vide more hereof, Sect.180. 528.648, &c.

¶ *Frankalmoigne, que eſt a dire en Latine, in liberam Eleemoſynam.* In Engliſh, in free Alms. There is an Officer in the Kings houſe called Eleemoſynarius, vulgarly called the Kings Almner, (whoſe office and duty is excellently deſcribed in ancient Authors,) viz. Fragmenta diligenter colligere, & diligenter diſtribuere ſingulis diebus egenis: ægrotos & leproſos, incarceratos, pauperesque viduas, & alios egenos vagoſque in patria commorantes charitativè viſitare: item equos relictos, robas, pecuniam, & alia ad Eleemoſynam largita, recipere, & fideliter diſtribuere. Debet etiam Regem ſuper Eleemoſynæ largitione crebris ſummonitionibus ſtimulare, præcipue diebus Sanctorum, & rogare ne robas ſuas, quæ magni ſunt pretii, hiſtrionibus, blanditoribus, accuſatoribus, ſeu meniſtrallis, ſed ad Eleemoſynæ ſuæ incrementum, jubeat largiri. Fleta lib.2. cap.23.

All Eccleſiaſtical perſons may hold in Frankalmoign, be they ſecular or regular, & no lay perſon can hold in Frankalmoign. This adjective (liber) doth diſtinguiſh many things in law from others: as here libera Eleemoſyna are words appropriated to this caſe, and do diſtinguiſh it from a Tenure by divine ſervice; liberum tenementum, from a Tenure in villenage, or by Vide Sect.1. Bract. lib.4. c.37,38. Britton cap.32.

Britton cap.66. Bract. lib.4. F.N.B. 150. Bract. lib.4. fol.288.247. 292. Britton fol.245. Fleta lib.5. cap.21. Fortſecue c.26. 24 E.2.34. 43 E.3. conſpir. 11. 27 Aſſ.59. Stanf.175. Vide Sect.199. Fleta lib.1. cap.47.

by Copphold, or baſe tenure; liberum feodum, frank fee, from a tenure in ancient Demean; liberum maritagium, from other eſtates tail; libera firma, frank ferm, when an eſtate is changed from Knights Service to Socage; liberum Socagium, from a tenure by ſervice in Chivalry. Francus Bancus, to diſtinguiſh it from other Bowers, for that it cometh freely without any act of the husbands, or aſſignment of the heir. Libera lex, to diſtinguiſh men, who enjoy it, and whoſe beſt and freeſt birthright it is, from them that by their offences have loſt it, as men attainted in an attaint, in a conſpiracy upon an Indictment, or in a Premunire, &c. And ſo of libera capella, francus plegius, frankpledge, libera chaſea, free chaſe, liber burgus, liber aper, liber taurus, and the like. But in a matter (ſome will ſay) of curioſity this ſhall ſuffice; and yet ſeeing it tends to the better underſtanding, (others ſay) it is tolerable.

Glanvil lib.7. ca.1. fol.44,45. acc. Britton cap.66. fol.164. Bract. lib.2. cap.5. & 10. F.N.B.211.

By the ancient Common Law of England, a man could not alien ſuch lands as he had by diſcent, without the conſent of his heir; yet he might give a part to God in free Almoigne, or with his daughter in free marriage, or to his ſervant in remuneratione ſervitii. Our old Books deſcribed Frankalmoigne thus, when lands or tenements were beſtowed upon God, (that is) given to ſuch people as are conſecrated to the ſervice of God. In our ancient Books theſe gifts of devotion were called Churcheſſet, or Churchſæd, quaſi ſemen Eccleſiæ; but in a more particular ſenſe it is deſcribed thus, Certam menſuram bladi tritici ſignificat, quam quilibet olim ſanctæ Eccleſiæ die ſancti Martini, tempore tam Britonum quam Anglorum, contribuerunt: plures tamen Magnates poſt Romanorum adventum illam contributionem ſecundum veterem legem Moiſis nomine primitiarum dabant, prout in Brevi Regis Knuti ad ſummum Pontificem tranſmiſſum continetur, in quo illam contributionem Churchſed appellant, quaſi ſemen Eccleſiæ.

Fleta lib.1. cap.42.

¶ *Et tiel tenure.* For albeit neither fealty nor any other temporall ſervice is due, yet it is a tenure.

7 E.4.12. 33 H.6.6,7. 39 H.6.29.

¶ (a) *En ancient temps.* That is to ſay, before the Statutes of Mortmain, viz. Magna Charta, cap.36. & 7 E.1. de Religioſis, &c. and before the Statute of Quia emptores terrarum; as ſhall be after in his proper place ſaid in this Chapter.

(a) Mortmaine. Britton fol.32. & 90. Bracton lib.2. cap.5. Fleta lib.3. cap.5.

¶ *Enfeoffe un Abbe & ſon Covent, &c.* Albeit the Covent be dead perſons in Law, and the Abbot onely capable, (as before is ſaid;) yet if the feoffment be made to an Abbot and Covent, the feoffment is good, and the ſtate veſteth onely in the Abbot. And note, a man may infeoffe an Abbot, a Biſhop, a Parſon, &c. or any other ſole body politique by Deed, or without Deed, in free Alms; and ſo may a gift in frankmarriage be made without deed alſo: but if lands be given to a Dean and Chapter, or any other Corporation aggregate of many, there the gift muſt be by deed.

11 H.7.12.

39 H.6.30. b.

¶ *A aver & tener a eux & a lour ſucceſſors.* For in caſe of an Abbot or Prior and Covent, regularly a Fee ſimple doth not paſs without theſe words (Succeſſors;) for the diverſity ſtandeth thus between a Corporation aggregate of many capable perſons, and a ſole Corporation. As if lands be given to a Dean and Chapter, they have a Fee ſimple without theſe words (Succeſſors,) for that the body never dies; but if lands be given to a Biſhop, Parſon, or any other ſole Corporation, who after their deceaſes have a ſucceſſion, there without theſe words (Succeſſors) nothing paſſeth unto them but for life. But of Corporations aggregate of many there is a diverſity, when the head and body both are capable, as in the caſe of Dean and Chapter, and when one (as hath been ſaid) is onely capable, as in caſe of Abbot or Prior and Covent: but yet out of the general rules the caſe of Frankalmoign is excepted, as hereafter ſhall be ſaid. Alſo Lands muſt be given to a Corporation aggregate of many by deed, but to a ſole Corporation it may be granted without deed.

Vide Littl. in the Chapter of Fee ſimple, Sect.1,2.

39 H.6.30.

Bracton lib.2. ca.10. Poteſt donatio fieri in liberam Eleemoſynam Eccleſiis Cathredralibus, Conventualibus, Parochialibus, & viris religioſis.

35 H.6.56. 7 E.4.11. Vide Bract. lib.2. cap.10.

¶ *En pure & perpetual almoigne.* Here it appeareth that a Tenure in Frankalmoign may be created without this word (libera,) for pura implieth as much.

35 H.6.56. 7 E.4.11. Bract. ubi ſupr. 44 E.3.24.

¶ *Ou en Frankalmoigne.* But one of theſe words, either pura, or libera, muſt be uſed, or elſe it is no Tenure in Frankalmoign.

20 H.6. fol.36.

¶ *Ou per ceux parolx, a tener de le grantor ou feoffor & ſes heires en Frankalmoigne.* Here it appeareth that by theſe words a Fee ſimple paſſeth without theſe words (Succeſſors) albeit it be in caſe of a ſole Corporation. For as in caſe of a gift in Frankmarriage, an Eſtate tail paſſeth to the Donees without words of heirs of their two bodies, as hath been ſaid in the Chapter of Fee tail; ſo in caſe of a gift in Frankalmoign (which may be reſembled to a divine marriage) a Fee ſimple paſſeth, as hath been ſaid, (though it be in caſe of a ſole Corporation,) without this word (Succeſſors.) And beſides, Grants in Frankalmoign are ancient Grants, as hath been ſaid, and therefore ſhall be allowed, as the Law was taken when ſuch Grants were made.

28 E.3.4. a. 14 H.6.12. 10 H.7.13. 16 H.7.9. 18 E.3. Conuſans 39. 33 H.6.22. 17 E.3.51. 6 E.3.54, &c. Tr. 5 E.3. Rot.4. in Scaccario. The Prior of Dunſtables caſe.

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Sect. 134.

¶ EN meſme le maner eſt lou terres ou tenements fueront grant en antient temps a un Deane & Chapter & a lour ſucceſſors, ou a un Parſon dun Eſglis & a ſes ſucceſſors, ou a alcun auter hõe de ſaint Eſglis & a ſes ſucceſſors, en Frankalmoigne, ſi il avoit capacity dapprendr̃ tiels grants ou feoffments, &c.

IN the ſame manner it is where Lands or tenements were granted in ancient time to a Dean and Chapter and to their ſucceſſors, or to a Parſon of a Church and his ſucceſſors, or to any other man of holy Church and to his ſucceſſors, in Frankalmoigne, if he had capacity to take ſuch grants or feoffments, &c.

¶ *EN meſme le maner, &c.* Here Littleton, having put an example of bodies incorporate aggregate of many, whereof the head is onely capable, now putteth examples both of bodies incorporate aggregate of many, (all being capable) and of ſole Corporations of ſecular perſons.

¶ *Deane*, Decanus, is derived of the Greek word *Δεκα*, that ſignifieth Ten, for that he is an Eccleſiaſtical ſecular Governour, and was anciently over ten Prebends or Canons at the leaſt in a Cathedrall Church, and is head of his Chapter.

¶ *Chapter.* Capitulum eſt Clericorum congregatio ſub uno Decano in Eccleſia Cathedrali. And Chapters be twofold, viz. the Ancient, and the Later. And the Later be alſo of two ſorts: firſt, thoſe which were tranſlated or founded by King Henry the Eighth, in place of Abbots and Covents, or Priors and Covents; which were Chapters whiles they ſtood; and theſe are new Chapters to old Biſhopricks. Secondly, where the Biſhoprick was newly founded by Henry the Eighth, (as Cheſter, Briſtow, &c.) there the Chapters are alſo new. There is a great diverſity betwixt the comings in of the ancient Dean, and of the new. For the ancient come in in much like ſort as Biſhops do; for they are choſen by the Chapter, by a Conge de eſlier, as Biſhops be, and the King giving his Royal aſſent, they are confirmed by the Biſhop. But they which are either newly tranſlated, or founded, are Donative, and by the Kings Letters Patents are inſtalled: which are matters neceſſary to be known.

¶ *Sil avoit capacitie a prender.* For Eccleſiaſtical perſons have not capacity to take in ſucceſſion, unleſs they be bodies Politick, as Biſhops, Archdeacons, Deans, Parſons, Vicars, &c. or lawfully incorporate by the Kings Letters Patents or preſcription, as Deans and Chapters, Colledges, &c. But a Colledge of religious perſons, Chauntry Prieſts, and ſuch like, that are not lawfully incorporated, but onely conſiſt in vulgar reputation, have no capacity to take in ſucceſſion; therefore Littleton added materially (ſil ad capacitie a prender)

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¶ ET tiels que teignont en frankealmoigne ſont oblige de droit devant Dieu de fair orilons, prayers, meſſes, & auters divine ſerbices pur les almes de lour grantor ou feoff. & pur les almes de lour heires

AND they which hold in Frankalmoigne are bound of right before God to make Oriſons, Prayers, Maſſes, and other divine ſervices for the ſouls of their grantor or feoffor, and for the ſouls of their heirs

¶ IN this Section there appeareth a diviſion of tenures, that is to ſay, ſome be ſpiritual, and ſome be temporal. And of ſpiritual, ſome be incertain, as tenures in Frankalmoigne; and ſome be certain, as Tenures by Divine Serbice. Again, Divine Serbice certain is twofold, either ſpiritual, as prayers to God; or temporal, as diſtribution of alms to poor people.

¶ *Oblige*

¶ *Oblige de droit.* That is, they are compellable by the Eccleſiaſtical Law to do it, and therefore it is ſaid that they are bound of Right. (for want of Remedy and want of Right is all one;) and the Common Law (as here it appeareth) taketh knowledge of the Eccleſiaſtical Law in that behalf.

¶ *De faire Oriſons, Prayers, Meſſes, & autres Divine Services.* Since Littleton wrote, the Liturgy or Book of Common Prayer, and of celebrating divine Service, is altered: this alteration notwithſtanding, yet the Tenure in Frankalmoign remaineth, and ſuch prayers and divine Service ſhall be ſaid and celebrated as now are authorized; yea, though the Tenure be in particular, as Littleton (a) hereafter ſaith, viz. a Chaunter un meſſe, &c. ou a Chaunter un placebo & dirige, yet if the Tenant ſaith the Prayers now authoriſed, it ſufficeth. And as Littleton (b) hath ſaid before in the caſe of Socage, the changing of one kind of temporal Services into other temporal Services altereth neither the name nor the effect of the Tenure: ſo the changing of ſpiritual Services into other ſpiritual Services altereth neither the name nor effect of the Tenure. And albeit the Tenure in Frankalmoign is now reduced to a certainty contained in the Book of Common Prayer; yet ſeeing the original Tenure was in Frankalmoign, and the change is by general conſent by authority of Parliament, (c) whereunto every man is party, the Tenure remains as it was before.

(a) Vide Sect. 137.

(b) Vide Sect. 119.

(c) 2 E. 6. c. 1. 5 & 6 E. 6. cap. 1. 1 Eliz. cap. 2.

¶ *Ne ferront aſcun fealtie.* Herein Tenant in Frankalmoign differeth from a Tenant in Frankmarriage: for Tenant in Frankmarriage ſhall do fealty, as hath been ſaid in the Chapter of Fee Tail; but Tenant in Frankalmoign ſhall not do any, or any other thing, but devota animarum ſuffragia.

¶ *Tiel divine Service eſt melior pur eux.* And it is alſo ſaid in our Books, (d) Que Frankalmoigne eſt le pluis haute Service; and this was confeſſed by the Heathen Poet,

(d) 33 H. 6. 6. 13 E. 1. tit. count de voucher 118.

——— fuit hæc ſapientia quondam,
Publica privatis ſecernere, ſacra profanis.

And certain it is, that Nunquam res humanæ proſperè ſuccedunt ubi negliguntur divinæ.

queux ſont mortes, & pur le proſperitie & bon vie & bon ſalute de lour heires q̃ ſont en vie. Et pur ceo ils ne ſerront a nul teps aſcun fealtie a lour Seignior, pur ceo q̃ tiel Divine Service eſt melior pur eux devant Dieu que aſcun fealans de fealtie; & auſi pur ceo q̃ ceux parolx (Frankalm̃) exclude le Seignior daver aſcun terrein ou temporal ſerbice, mes daver tantſolement divine & ſpiritual ſervice, deſtre fait pur luy, &c.

which are dead, and for the proſperity and good life and good health of their heirs which are alive. And therefore they ſhall do no Fealty to their Lord, becauſe that this Divine Service is better for them before God then any doing of Fealty; and alſo becauſe that theſe words (Frankalmoign) exclude the Lord to have any earthly or temporal Service, but to have onely Divine and Spiritual Service, to be done for him, &c.

Sect. 136.

¶ *LE Seigniour ne poet eux diſtreiner pur ceſt non feaſant, &c.*

¶ *Diſtreine.* The

¶ ET ſi tiels que teignont lour tenements en Frankalmoigne ne voilont ou failõt d̃ faire tiel

AND if they which hold their Tenements in Frankalmoign will not or fail to do ſuch Divine ſervice, (as

di-

divine ſervice (cõe eſt dit) le ſñr ne poit eux diſtrainer p̃ tel non feſant, &c. pur ceo que neſt mis en certeine quelx ſervices ils doient faiꝫ: mes l'ſñr de ceo poit complaine a lour Ordinary ou Viſitour, luy prayant que il voiloit mitter punishment & correction õ ceo, & auxy de provider q̃ tiel negligence ne ſoit pluis avãt fait, &c. Et lordinary ou viſit de droit ceo doit faire, &c.

is ſaid) the Lord may not diſtrain them for not doing this, &c. becauſe it is not put in certainty what ſervices they ought to do: but the Lord may complain of this to their Ordinary or Viſitor, praying him that he will lay ſome puniſhment & correction for this, and alſo provide that ſuch negligence be no more done, &c. And the Ordinary or Viſitour of right ought to do this, &c.

word Diſtreſſe is a French word: in Latine it is called diſtrictio, ſive anguſtia, becauſe the cattel diſtrained are put into a ſtreight, which we call a pound.

¶ *Pur ceo que neſt miſe en certaine queux ſervices ils doient faire.* It is a Maxime in Law, that no diſtreſſe can be taken for any ſervices that are not put into certainty, (e) nor can be reduced to any certainty, for, Id certum eſt quod certum reddi poteſt; for (f) oportet quod certa res deducatur in judicium: and upon the Avowry Damages cannot be recovered for that which neither hath certainty, nor can be reduced to any certainty: and yet in ſome caſes there may be a certainty in uncertainty, as a man may hold of his Lord to ſhear all the ſheep depaſturing within the Lords Manor; and this is certain enough, albeit the Lord hath ſometime a greater number and ſometime a leſſer number there, and yet this uncertainty being referred to the Manor which is certain, the Lord may diſtrain for this uncertainty. Et ſic de ſimilibus.

(e) 35 H.6.37. Br. tit. offic.4. 8 E.3.3.66. 20 E.3. Avowry 131.
(f) Bracton fol.230. & 328.
7 E 3.38.

¶ *Poet complainer.* That is, to complain in courſe of Juſtice, according to the Eccleſiaſtical Law.

¶ *A lour Ordinary.* Ordinarius, and ſo he is called (g) in the Eccleſiaſtical Law, Quia habet ordinariam jurisdictionem in jure proprio, & non per deputationem. The name we have anciently taken from the Canoniſts, and do apply it onely to a Biſhop, or any other that hath ordinary juriſdiction in Cauſes Eccleſiaſtical. In this caſe of Littletons it is to be obſerved, that the Law doth appoint every thing to be done by thoſe unto whoſe office it properly appertaineth; and forasmuch as it belongeth to the office of the Ordinary in this caſe to ſee Divine Service ſaid, and to compell them to do it by Eccleſiaſtical cenſures, therefore complaint is to be made unto him. Here and in the next Section it appeareth, that for deciding of controverſies, and for diſtribution of Juſtice within this Realm, there be two diſtinct juriſdictions, the one Eccleſiaſtical, limited to certain ſpiritual and particular caſes, (of the one whereof our Author here ſpeaketh:) and the Court wherein theſe cauſes are handled is called Forum Eccleſiaſticum. The other juriſdiction is ſecular and general, for that it is guided by the common and general Law of the Realm, Quæ pertinet ad coronam & dignitatem regis, & ad regnum, in cauſis & placitis rerum temporalium in foro ſeculari. So as in this caſe put by our Author the Lord hath remedy for his Divine Service (albeit they iſſue out of temporal lands) in Foro Eccleſiaſtico, by the Eccleſiaſtical Law, otherwiſe the Lord ſhould be without Remedy. Yet the Common Law, to the intent that Eccleſiaſtical perſons might the better diſcharge their duty in celebration of Divine Service, and not be entangled with temporal buſineſs, hath provided, that if any of them be choſen to any temporal office, he may have his writ De clerico infra ſacros ordines conſtituto non eligendo in officium, &c. and thereof be diſcharged.

(g) Mirror cap.5. Sect. Bracton lib.5.fol.405,&c. Fleta lib.2. cap. 50. & 55. & lib.6. cap.38. Britton fol. 69,70. W.2. cap.19. 17 E.2. breve 822. Regiſt. 141. Lindwood, tit. de Conſtit. cap. exter. Bract. lib.5. cap.2. fol. 400, & 401. and the other Authors aboveſaid.

Regiſt. orig. 187.

¶ *Ou Viſitor.* That is, where the King or any of his Progenitors is Founder of the houſe, there the Ordinary regularly ſhall not viſit them, but the Chancellour of England is appointed by the Law to be Viſitor of them; or where a ſpecial Viſitor is appointed upon the foundation, the complaint muſt be made to that Viſitor.

27 E.3.84,85. Regiſt.40. F.N.B.42. 10 Eliz. Dier 273. 16 E.3. breve 660. 21 E.3.60. 6 H.7.13. 8 Aſſ. 29. Brook, tit. Præmunire 21.

¶ *De droit doit ceo faire.* De Droit, of Right, (that is to ſay) he ought to do it by the Eccleſiaſtical Law, in the Right of his Office.

And here is implied a Maxime of the Common Law, that where the Right (as our Author here ſpeaketh) is ſpiritual, and the Remedy therefore onely by the Eccleſiaſtical Law, the conuſans thereof doth appertain to the Eccleſiaſtical Court.

Sect.

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2 E.3.27,28.

¶ *PEr certaine Divine ſervice deſtre fait, ſicome a chaunter un meſſe, &c. ou de diſtributer en Almoign, &c.* Here be the two parts abode mentioned of Divine Service, and for this Divine Service certain the Lord hath his remedy, as here it appears by our Author, in foro ſeculari: for here it appears, that if the Lord diſtrein for not doing of Divine Service which is certain, he ſhall upon his avowry recover dammages at the Common Law, that is, in the Kings temporal Court, for the not doing of it. And if iſſue be taken upon the performance of the Divine Service, it ſhall be tried by a Jury of twelve men; becauſe albeit the ſervice be ſpiritual, yet the dammages are temporal, and ſo is the Deignory alſo.

38 H.6.26,27.

2 E.6. ca.13. verſus finem. 13 E.3. ca.5. 11 H.7. ca.8. 1 El. ca.2. 13 El. cap.1. 23 El. cap.1. 1 Ja. c.11. & 12.

And here is implied another Maxime of the Law, that where the Common or Statute Law giveth remedy in Foro ſeculari, (whether the matter be temporall or ſpiritual) the Conuſance of that cauſe belongeth to the Kings temporall Courts onely, unleſſe the juriſdiction of the Eccleſiaſticall Court be ſaved or allowed by the ſame Statute, to proceed according to the Eccleſiaſticall Laws.

¶ *Ou de diſtributer en almoign al cent pours homes.* Here note, that the Alms and Relief of poor people being a work of charity is accounted in Law divine Service; for what herein is done to the Poor for Gods ſake, is done to God himſelf.

¶ *Poet diſtrein, &c.* Here (&c.) includeth many

¶ MEs ſi un Abbe ou Prior tient de ſon Seignior p certaine Divine Service en certaine deſtſ fait, ſicome a chaunter un meſſe chelchun vendredie en le ſemaine pur les Almes, ut ſupra, ou chelcun an a tiel jour a chaunter placebo & dirige, &c. ou de trover un chapleine de chanter meſſe, &c. ou de diſtributer en Almoigne al cēt pours homes cent deniers a tiel jour: en tiel caſe, ſi tiel Divine Service ne ſoit fait, le Seignior poit diſtreyner, &c. pur ceo que le Divine Service eſt miſe en certeine per lour Tenure, que le Abbe ou Prior devoit faire. Et en tiel caſe le Seignior avera Fealtie, &c. come il ſemble. Et tiel Tenure neſt paſſe dit Tenure en Frankalmoigne, mes eſt dit Tenure per Divine Service. Car en Tenure en Frankalmoigne nul mention eſt fait dalcun manet de Service: car nul poet tener en Frankal-

But if an Abbot or Prior holds of his Lord by a certain Divine Service in certain to be done, as to ſing a Maſſe every Friday in the week for the Souls, *ut ſupra*, or every year at ſuch a day to ſing a *Placebo & dirige*, &c. or to find a Chaplain to ſing a Maſſe, &c. or to diſtribute in almes to an hundred poor men an hundred pence at ſuch a day: in this caſe, if ſuch Divine Service be not done, the Lord may diſtrain, &c. becauſe the Divine Service is put in certain by their Tenure, which the Abbot or Prior ought to do. And in this caſe the Lord ſhall have Fealty, &c. as it ſeemeth. And ſuch Tenure ſhall not be ſaid to be Tenure in Frankalmoigne, but is called Tenure by Divine Service. For in Tenure in Frankalmoigne no mention is made of any manner of Service: for none can hold in Frankalmoigne, if there be expreſſed any manner

moign,

moign, ſi ſoit expreſſe aſcun manñ ō ꝯtain ſervice que il doit faire, &c. of certain Service that he ought to do, &c.

excellent things; as where, & what may be diſtrained: of all which there is a taſte given in their proper places.

¶ *En tiel caſe le Seignior avera fealtie, &c. come ſemble.* For, as it hath ſaid, Fealty is incident to every Tenure, ſaving the Tenure in Frankalmoign, and where the Lord may diſtrain, there is Fealty due. And Britton calleth this Tenure (by Divine ſervice) Aumone, and not libera Eleemoſyna. And ſaith he, Tenure en aumone eſt terre ou tenement que eſt done a aumone, dount aſcun ſervice eſt retenue al feoffor. Brit. fol. 164.

¶ *&c.* And here (&c.) implieth Diſtreſs, Eſcheat, and the like.

¶ *Et tiel Tenure neſt paſſe dit Tenure en Frankalmoigne, mes eſt dit Tenure per Divine ſervice, &c.* And therefore our old Book divided Spiritual Service into free Alms, (which was free from any limitation of certainty) and Alms, becauſe the Tenants were bound to certain divine Services. 33 H. 6. fol. 6. Brit. cap. 66.

¶ *Sil ſoit expreſſe aſcun maner de certeine ſervice.* This holdeth where the certainty is reſerved upon the original Grant. If lands were given to hold in libera Eleemoſyna, reddendo a rent, it ſeemeth the reſervation of the Rent to be void, * becauſe it is repugnant and contrary to the former Grant in libera Eleemoſyna. 13 E.1. Count de vouch. 118. * 13 H.4. tit. Meſne 74. 30 E.3.30. 19 E.2. Avowry 224. 32 E.1. Tail 31. 26 Aſſ.66. 4 H.6.17.

Vide Trin. 4 E. 3. and F.N.B. 231. f. That an Abbot or Prior that hold in Frankalmoign ſhall not be charged with a Corody. Alſo lands holden in Frankalmoign cannot (l) be ancient Demeſne, in reſpect of charges incident thereunto. Trin. 4 E.3.F.N.B.231. f. 15 E.3. Corody 4. 11 Aſſ.22. 50 Aſſ. pl.6. (l) 32 E.1. ant.Dem.39. 8 E. 3. 5.

¶ *Que il doit faire, &c.* Here by (&c.) is underſtood temporal or ſpiritual Service alſo which he ought to do corporally, or render, or pay.

There were within this Realm of England one hundred and eighteen Monaſteries, founded by the Kings of England, whereof ſuch Abbots and Priors as were founded to hold of the King per Baroniam, and were called to the Parliament by Writ, were Lords of Parliament, and had places and voices there. * And of them there were twenty ſeven Abbots, and two Priors, as by the Rolls of Parliament appears. But ſince our Author wrote, all theſe (as hath been ſaid) are diſſolved. King Stephen did found the Abby of Feverſham in Kent; Et dedit Abbati, & Monachis, & ſucceſſoribus ſuis, Manerium de Feverſham in Com. Kanciæ, ſimul cum Hundredo, &c. tenendum per Baroniam, &c. Who albeit he held by a Barony, yet becauſe he was never (that I (m) find) called by Writ, he never ſate in Parliament. * For example, Rot. parl. 5 H.8. & 21 H.8. &c. (m) Canc. Paſch. 30 E. 1. cor. Rege, this foundation is ſo pleaded.

All the Archbiſhops and Biſhops of England have been founded by the Kings of England, and do hold of the King by Barony, (as before hath been ſaid) and have been all called by writ to the Court of Parliament, and are Lords of Parliament: As (amongſt many) take one notable Record. (o) Mandatum eſt omnibus Epiſcopis, qui conventuri ſunt apud Glouceſtriam, die Sabbati in craſtin' Sanctæ Katharinæ, firmiter inhibendo, quod ſicut Baronias ſuas quas de Rege tenent diligunt, nullo modo præſumant conſilium tenere de aliquibus quæ ad Coronam Regis pertinent, vel quæ perſonam Regis, vel ſtatum ſuum, vel ſtatum conſilii ſui contingunt; ſcituri pro certo, quod ſi fecerint, Rex inde ſe capiet ad Baronias ſuas. Teſte Rege apud Hereford. 23. Novemb. &c. And the Biſhopricks in Wales were founded by the Princes of Wales, and the Principality of Wales was holden of the King of England as of his Crown: and when the Prince of Wales committed Treaſon, Rebellion, &c. the Principality was forfeited, and the Patronages of the Biſhops annexed to the Crown of England, ſo as the King is to have Penſions for his Chaplains, and Corodies for his Vadelets, of them, as of Biſhops founded by himſelf. And vide Mich. 10 H.4. Rot. 60. Wallia coram Rege, that the judgment was given accordingly againſt the Biſhop of Saint Davids in Wales, per Juſticiarios de utroque Banco & alios de perito concilio Domini Regis. And the Biſhops of Wales are alſo called by Writ to Parliament, and are Lords of Parliament, as Biſhops of England be. (o) Ex Rot. pat. de anno 18 H.3. M. 17. 10 H.4. fol.6. b.

Sect. 138.

¶ Item ſi ſoit demandō, ſi tenēn frankmariage ſerra fealtie a le doñ ou a

Alſo if it be demanded, if tenant in frankmarriage ſhall doe fealty to the Do-

¶ *Le quel ſerra inconvenient, &c.* An argument drawn from an inconvenience is forcible in Law, as hath been obſerved Vide Sect. 87, 139, 201, 269, 440, 478, 665, 722.

40 Aſſ. 27.

Littleton fol. 50. b. 42 E. 3. 5. 28 E. 3. 395. 20 H. 6. 28.

ved before, and ſhall be often hereafter. Nihil quod eſt inconveniens eſt licitum. And the Law, that is the perfection of reaſon, cannot ſuffer any thing that is inconvenient.

It is better, ſaith the Law, to ſuffer a miſchief that is particular to one, then an inconvenience that may prejudice many. See more of this after in this Chapter.

Note, the reaſon of this diverſity betwæn Frankalmoigne and Frankmarriage ſtandeth upon a main Maxim of Law, that there is no land that is not holden by ſome ſervice ſpiritual or temporal: and therefore the Lords in Frankmarriage ſhall do fealtie, for otherwiſe he ſhould do to his Lord no ſervice at all; and yet it is Frankmarriage, becauſe the Law createth the ſervice of Fealty for neceſſity of reaſon, and avoiding of an inconvenience. But tenant in Frankalmoigne doth ſpiritual and divine Service, which is within the ſaid Maxim; and therefore the Law will not cohort him to do any temporal ſervice. See the next Section.

ſes heires devant le quart degrée paſſe, &c. il ſemble que ey; car il neſt pas ſemble quant a cel entēt a tenant en Frankalmoigne, pur ceo que tenant en Frankalmoign ſerra, p cauſe de ſa tenure, divine ſervice pur ſon Sñr, come devant eſt dit, & ceo il eſt charge a faīt p la ley del ſaint egliſe; & pur ceo il eſt exruſe & diſcharge de fealty: mes tenant en frankmarriage ne ſerra pur ſon tenure tiel ſervice; & ſil ne ſerra fealty, donqꝫ il ne ſerra a ſon Seignior aſcun maner de ſervice, ne ſpiritual ne temporal, le quel ſerroit inconvenient & enconꝰ reaſon, que home ſerra Tenant deſtate denheritance a un auter, & uncore l' ſñr avera nul maner de ſervice de luy: & iſſint il ſemble que il ſerra Fealty a ſon ſñr devant le quart degrée paſſe. Et quant il ad fait Fealty, il ad fait touts ſes ſervices.

nor or his heir before the fourth degree be paſt, &c. it ſeemeth that he ſhall; for he is not like as to this purpoſe to tenant in frankalmoigne, for tenant in frankalmoigne, by reaſon of his tenure, ſhall do divine ſervice for his Lord, (as is ſaid before) and this he is charged to do by the Law of holy Church; and therefore he is excuſed and diſcharged of Fealty: but tenant in frankmarriage ſhall not do for his tenure ſuch ſervice; and if he doth not Fealty, he ſhall not do any manner of ſervice to his Lord, neither ſpiritual nor temporal, which would be inconvenient, and againſt reaſon, that a man ſhall be tenant of an eſtate of inheritance to another, and yet the Lord ſhall have no manner of ſervice of him: and ſo it ſeems he ſhall do Fealty to his Lord before the fourth degree be paſt. And when he hath done Fealty, he hath done all his ſervices.

¶ *Et enconter reaſon.* And this is another ſtrong argument in Law, Nihil quod eſt contra rationem eſt licitum. For reaſon is the life of the Law, nay the common Law it ſelf is nothing elſe but reaſon, which is to be underſtood of an artificial perfection of reaſon, gotten by long ſtudy, obſervation, and experience, & not of every mans natural reaſon; for, Nemo naſcitur artifex. This legal reaſon eſt ſumma ratio. And therefore if all the reaſon that is diſperſed into ſo many ſeveral heads were united into one, yet could he not make ſuch a Law as the Law of England is, becauſe by many ſucceſſions of ages it hath bæn fined and refined by an infinite number of grave and learned men, and by long experience grown to ſuch a perfection for the government of this Realm, as the old rule may be juſtly verified of it, Neminem oportet eſſe ſapientiorem legibus: No man (out of his own private reaſon) ought to be wiſer then the Law, which is the perfection of Reaſon.

Sect.

Sect. 139.

¶ ET ſi un Abbe tient de ſon ſeignior en frankalm. & Labbe & le covent ſouth lour common ſeale alien meſmes les tenements a un ſecular home en fée ſimple; en ceo cas le ſecular home ſerra fealtie a l' Seignior, pur ceo que il ne poit tener de ſon Sſir en frankalmoigne. Car ſi le Seignior ne doit aver de luy fealtie, donque il avera nul maner d' ſervice, que ſerroit inconvenient ou il eſt Sſir, & le tenement eſt tenus de luy.

AND if an Abbot holdeth of his Lord in frankalmoign, and the Abbot and Covent under their common ſeal alien the ſame Tenements to a ſecular man in fee ſimple; in this caſe the ſecular man ſhall do fealty to the Lord, becauſe he cannot hold of his Lord in Frankalmoigne. For if the Lord ſhould not have Fealty of him, he ſhould have no manner of ſervice, which ſhould be inconvenient where he is Lord, and the Tenements be holden of him.

¶ This caſe is worthy of great obſervation, for hereby it appeareth, that albeit the Alienors held not by fealty nor any other terrene ſervice, but only by ſpiritual ſervices, and thoſe incertain, yet the alienee ſhall hold by the certain ſervice of fealty: (and of this opinion is Littleton, agreeable with our books in former Authorities:) for the Law createth a new temporal ſervice out of the land to be done by the Alienee, wherewith the Abbot was not formerly charged, for the avoiding of an inconvenience, viz. that the feoffee ſhould do no manner of ſervice, and conſequently that the land ſhould be holden of no man. Wherein it is to be remembred, that (as hath been ſaid before) all the lands and tenements in England in the hands of any ſubject are holden of ſome Lord or other, and that every Tenant muſt do ſome kind of ſervice; and that all Lands and Tenements are holden either mediately or immediately of the King, for originally all lands and tenements were derived from the Crown. And it is to be obſerved, that when the Law createth any new tenure, it is the loweſt (viz. Tenure in Docage) and with the leaſt ſervice that can be done, and neareſt to the freedom of the former ſervice: as in this caſe, a Tenure in Docage by Fealty only is created by the Law, which is the loweſt and leaſt ſervice the Law can create, becauſe Fealty is incident to every Tenure except Tenure in Frankalmoign; for if it ſhould create any other ſervice, it muſt create Fealty alſo. And the Law, according to equity and juſtice, giveth this Fealty to the Lord, of whom the land was before holden in Frankalmoign. And laſtly, the Law ſo abhorreth an inconvenience, as that it createth out of the Land a new ſervice for avoiding thereof. It appeareth by our books, that a Seignior in Frankalmoign may be granted over, and conſequently the Tenant ſhall hold of the Grantee by Fealty only: and therefore Britton ſaid well, that no ſervice could be demanded of a Tenant in Frankalmoign, tant come les terres remaine en les maines les feoffees.

31 E.3. Ceſſant. 22. 33 H.6.67. 21 E.4.11. Lib.9. fol. 123. Anth. Lowes Caſe.

Lib.9. fol. 123. in Anth. Lowes Caſe.

42 Aſſ. Pl. 6. Britton 164. b.

Sect. 140.

¶ ITem ſi home graunta a cel jour a un Abbe ou a un Prior terres ou tenements en frankalmoigne, ceux poſſ (frankalmoign) ſont

ALſo if a man grant at this day to an Abbot or to a Prior Lands or Tenements in Frankalmoigne, theſe words (frankalmoign) are void, for it is or-

¶ *Ordeine per le ſtatute.* Here it appeareth by the authority of Littleton, that this is a Statute, and yet the King alone ſpeaketh, viz. Dominus Rex in Parliamento ſuo, &c. ad inſtantiam magnatum Regni ſui conceſſit, providit, & ſtatuit.

Vide lib. 8. the Princes Case.

But because it is, Dominus Rex in Parliamento, &c. concessit, it is as much in this case (being an ancient Statute) as Dominus Rex authoritate Parliamenti concessit. Secondly, It is (amongst other acts of Parliament) entred into the Parliament Roll, and therefore shall be intended to be ordained by the King, by the consent of the Lords and Commons in that Parliament assembled. Thirdly, It is a generall Law, whereof the Judges may take knowledge; and therefore it is to be determined by them, whether it be a Statute or no. Now for the divers forms of Acts of Parliament, you may read them in the Princes case, ubi supra.

¶ *Appelle Quia emptores terrarum.* This Statute is called so, because the Statute beginneth with these words, Quia emptores terrarum.

¶ *Nul poet aliener, &c. terres in fee simple a tener de luy mesme.* This is justly inferred upon the Statute; but the letter of the Statute is, that Feoffatus teneat terram illam de capitali Domino, &c. So as by the authority of Littleton, he that citeth a Statute is not bound to recite the very words thereof, so long as he misseth not of the substance and necessary consequence thereupon: and yet the safer way is, to vouch the words of a Law as they be.

13 E. 3. tit. release 33.
27 H. 8. F. N. B. 211. I.

¶ *Graunta per licence mesme les tenements*, &c. Here Littleton speaketh of a Licence or a dispensation within the said Statute of Quia emptores terrarum, (and mentioneth no other Statute) which may be done by the King and all the Lords immediate and mediate; for it is a rule in Law, Alienatio, licet prohibeatur, consensu tamen omnium, in quorum favorem prohibita est, potest fieri. And therefore if a man seised of certain Tenements which he holdeth of his Lord by Knights Service, and at this day he, &c. granteth by licence the same Tenements to an Abbot, &c. in Frankalmoign, the Abbot shall hold immediately the Tenements by Knights Service of the same Lord of whom his Grantor held, and shall not hold of his Grantor in Frankalmoigne, by reason of the same Statute. So that none can hold in Frankalmoigne, unless it be by title of prescription, or by force of a grant made to any of his Predecessours before the same Statute was made. But the King may give Lands or Tenements in Fee simple, to hold in Frankalmoigne, or by other services, for he is out of the case of that Statute.

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voides, pur ceo que il est ordeine per lestatute que est appelle Quia emptores terrarum (que lestatut fuit fait Anno 18 Ed. 1.) que nul poit aliener ne graunter terres ou tenements en fee simple a tener de luy mesme. Jsint si hõe seisie de certein tenements quer il tient de son Seignior per service de chivaler, & a cel jour il, &c. grãta per licence mesmes les tenements a un Abbe, &c. en Frankalmoigne, Labbe tiendra immediatment mesmes l's tenemẽts per service de Chivaler de mesme le Seignior de q̃ son grantor tenoit, & ne tiendra my de son grant en Frankalmoign, p̃ cause de mesme lestatut. Jsint que nul poit tener en Frankalmoigne, si non q̃ soit per title de prescription, ou per force de graunt fait a ascun d̃ ses predecessors devant q̃ mesme le statute fuit fait. Mes le Roy poit doner terres ou tenements en fee simple, a tener en Frankalmoigne, ou per auters services, car il est hors de cas del statute.

dained by the Statute which is called *Quia emptores terrarum*, (which was made *Anno* 18 E. 1.) that none may alien nor grant Lands or Tenements in Fee simple to hold of himself. So that if a man seised of certain Tenements which he holdeth of his Lord by Knights Service, and at this day he, &c. granteth by licence the same Tenements to an Abbot, &c. in Frankalmoign, the Abbot shall hold immediately the Tenements by Knights Service of the same Lord of whom his Grantor held, and shall not hold of his Grantor in Frankalmoigne, by reason of the same Statute. So that none can hold in Frankalmoigne, unless it be by title of prescription, or by force of a grant made to any of his Predecessours before the same Statute was made. But the King may give Lands or Tenements in Fee simple, to hold in Frankalmoigne, or by other services, for he is out of the case of that Statute.

quo-

quorum favorem prohibita eſt poteſt fieri, & quilibet poteſt renunciare juri pro ſe introducto. And the licence of Lords immediate and mediate in this caſe ſhall enure to two intents, viz. to a diſpenſation both of the ſtatute of Quia emptores terrarum, and of the ſtatutes of Mortmaine, as Littleton here implieth, becauſe their deeds ſhall be taken moſt ſtrongly againſt themſelves. But it is a ſafe and good policy in the Kings licence to have a Non obſtante alſo of the ſtatutes of Mortmaine, and not only a Non obſtante of the ſtatute of Quia emptores terrarum. But it appeareth by Littleton (which is a ſecret of Law) that there needeth not any Non obſtante by the King of the ſtatutes of Mortmaine, for the King ſhall not be intended to be miſconuſant of the Law; and when he licenceth expreſly to alien to an Abbot, &c. which is in Mortmaine, he needs not make any Non obſtante of the ſtatutes of Mortmaine, for it is apparent to be granted in Mortmaine, and the King is the head of the Law, and therefore Præſumitur Rex habere omnia jura in ſcrinio pectoris ſui, for the maintenance of his grant to be good according to the Law: for which cauſe of purpoſe Littleton maketh no mention of any licence in Mortmaine. Diſpenſatio eſt mali prohibiti provida relaxatio, utilitate ſeu neceſſitate penſata.

43 Aſſ. pl. 19. 9 E. 4. b. 11. Pl. Com. 502, 503. Grendons caſe. Vide l. 10. 25. 26. 31. & 110. Vide Sect. 686. Littleton fol. 20. 2.

¶ *Labbe tiendra, &c. per ſervice de chivaler.* For although by the death of the Abbot there is neither Ward, Marriage, nor Relief due, yet he holdeth by Knights ſervice, albeit the Lord cannot have the fruit of it: and if the Abbot with the conſent of the Covent alien the land over to a man and his heirs, there is the Ward, Marriage and Relief revived. But by preſcription (as it hath been ſaid) the ſucceſſor of an Abbot may pay Relief. An Abbot or Prior, &c. that holdeth lands by Knights ſervice, albeit he ought not in reſpect of his profeſſion to ſerve in warre in proper perſon, yet muſt he find a ſufficient man, conveniently arrayed for the warre, to ſupply his place. And if he can find none, then muſt he pay Eſcuage, &c. for his profeſſion doth not priviledge him, but that the Kings ſervice in his warre muſt be done, that belongeth to his tenure.

8 R. 2. Reliefs 14. 3 H. 4. 2. 2. Vide Littl. fol. 20.

Nota, (Reader) ſince Littleton wrote, a man might either in his life-time, or by his laſt will in writing, (m) give Lands, Tenements, &c. to any ſpiritual body Politick, or Corporate, to be holden of himſelf in Frankalmoign, or by Divine Service, as by the ſtatute of 1 & 2 Phil. & Mariæ (which endured for twenty years) appeareth; which ſtatute ſince that time hath been favourably and benignly expounded.

(m) 1 & 2 Ph. & Mar. c. 8. Mich. 8 & 9 Eliz. Dier fol. 255.

¶ *Iſſint que nul poet tener en Frankalmoign, ſi non que ſoit per title de preſcription, &c.* It is to be underſtood that a man ſeiſed of lands may at this day give the ſame to a Biſhop, Parſon, &c. and their ſucceſſors in Frankalmoign, by the conſent of the King and the Lords mediate and immediate, of whom the land is holden; for the rule is, Quilibet poteſt renunciare juri pro ſe introducto.

12 E. 4. 4. 27 H. 8. 2 E. 2. Bro. Ley 185.

So if an Eccleſiaſtical Perſon hold lands by fealty and certain Rent, the Lord at this day may confirm (n) his eſtate, to hold to him and to his ſucceſſors in Frankalmoign; for the former Services be extinct, and nothing is reſerved but that he holds of him, and ſo he did before.

(n) 4 E. 3. 21. 22 E. 3. 16. 38 H. 6. 25. Litt. cap. confirmat. 123.

¶ *Mes le Roy poet, &c. car il eſt hors de caſe del ſtatute.*

It is clear that the King is out of the caſe of the ſtatute; for the ſtatute is, Quod feoffatus teneat terram illam, &c. de capitali Domino feod'; &c. and this cannot be intended of the King, who is ſuperior to all, and inferiour to none. But where the King is bound by Acts of Parliament, and where not, Vide lib. 11. fol 66. Magdalen Colledg Caſe.

Lib. 11. fol. 66. Magdalen Colledg caſe.

Sect. 141.

¶ ET nota, q̃ nul poit tener terres ou tenements en frankalmoign, forſpriſe del grantor ou de ſes heires. Et pur ceo il eſt dit, que ſi ſoit Seignior, meſne & tenant, & le tenant eſt un Abbe que tient

And note, that none may hold lands or tenements in Frankalmoigne, but of the Grantor or of his heires. And therefore it is ſaid, that if there be Lord, Meſne and tenant, and the tenant is an Abbot which

¶ *Forſpriſe del grantor ou de ſes heirs.*

The Tenure in Frankalmoigne is an incident to the inheritable blood of the Grantor, and cannot be transferred nor forfeited to any other, no more then a founderſhip of a houſe of Religion, which is intended to be in Frankalmoign, or Homage Aunceſtrel, or the writ of Contra formam Feoffamenti, or the Writ of Contra

14 E. 3. tit. Meſne 7. 14. H. 3. tit. diſclaim. b. 33. 15 E. 3. confirm. 8. 27 H. 8. b. Temps E. 1. gar. 90. 45 E. 3. 23. 47 H. 3. gar. 99. 11 H. 4. 52. 14 H. 4. 5. 10 H. 7. 11. 28 Aſſ. 33. 18 E. 3. 18. 22 E. 3. 18. Corody broke 5. 22 H. 6. 30. 4 E. 2. Bro. Ley 201, 202. 19 E. 3. ibid. 122. 11 E. 4. ib. 100. 30 H. 6. 7. 33 H. 8. Dier 51. F. N. B. 16. F. N. B. 211. c.

Contra formam collationis, or any other incident to their inheritable blood. But it is no incident inſeparable, for the Lord may releaſe to the Tenant in Frankalmoigne, and then the tenure is extinct, and he ſhall hold of the Lord Paramount by fealty, as in the caſe of Littleton, Sect. 139.

15 E. 3. Confirm. 8.

¶ *Ou de ſes heires.* Here (or) hath the ſenſe of (and): for a man cannot at this day grant lands in tail, and reſerve a Rent to his heirs, and exclude the Grantor himſelf; for the heir cannot take any thing in the life of the Anceſtor, neither can the heir take any thing by deſcent, when the Anceſtor himſelf is excluded. But if a man had granted lands at the Common Law to hold of his heirs, theſe words (To hold of his heirs) are void, and he ſhall hold of the Grantor, as he held ober, which he ſhould have done if he had made no reſervation at all.

Vide 15 E. 4.

33 E. 3. tit. Annuity 52.
3 Aſſ. Pl. 8, &c.

And albeit Littleton ſaith, that no man can hold lands in Frankalmoign but of the Grantor or his heirs; yet might an Abbot by aſſent of his Covent, or a Biſhop with aſſent of his Chap. and ſuch like, by licence as is aforeſaid, have given lands in Frankalmoign, to hold of them and their ſucceſſors, and, as Littleton himſelf agreeth, the King may give land in Frankalmoign. In which caſe the land ſhall be holden of him, his heirs and ſucceſſors.

¶ *Et pur ceo eſt dit, ſi ſoit Seignior, meſne, & tenant, & le tenant eſt un Abbe, &c.* By this it appeareth, that if the Seigniory be transferred by Act in Law to a ſtranger, and thereby the privity is altered, that the tenure in Frankalmoign is changed to a tenure in Socage by fealty, as well as it appeareth before when the Seigniory or Tenancy is granted to another; and the Law in this caſe alſo createth a new fealty, wherewith the Land was not charged before.

¶ *Donques le meſnaltie deviendra per eſcheat al dit Seignior Paramount.* This new Tenure created by Law ſhall upon the Eſcheat drown the Seigniory; for always the Seigniory nearer to the land drowns the Seigniory that is more remote off; and yet the Lord in this caſe to whom the Meſnalty is eſcheated ſhall hold by the ſame ſervices that he held before the Eſcheat.

2 E. 4. 46.

7 E. 4. 12. 2.

de ſon meſne en frãkalmoign, ſi le meſne deby ſans heire, donque le meſnaltie deviendra per eſcheate al dit Seignior Paramount, & Labbe adonque tient de luy immediate per fealtie tantum, & ferra a luy Fealty, pur ceo que il ne puit tener de luy en Frankalmoigne, &c.

holdeth of his Meſne in Frankalmoigne, if the Meſne dye without heir, the Meſnalty ſhall come by Eſcheat to the ſaid Lord Paramount, and the Abbot ſhall then hold immediately of him by fealty only, and ſhall do to him fealty, becauſe he cannot hold of him in Frankalmoigne, &c.

Sect. 142.

¶ *Home de Religion.* And yet this caſe extendeth to all Eccleſiaſticall perſons that hold in Frankalmoign, be they ſecular or regular; for the Meſne ought to acquit all of them, for they be bound (a) to make prayers for their founder, and his heirs, and in conſideration of thoſe prayers, the founder, &c. is bound to pay to the chief Lord all Rents and Services iſſuing out of that Land, as it appeareth by that which followeth.

(a) Pl. Com. 306. b. in Shorington's caſe. 33 H. 6. 6. 39 H. 6. 29. 14 E. 3. meſne 7.

¶ *De luy acquiter.*

¶ Et nota, q̃ lou tiel hõe de religion rient ſes Tenements de ſon Sñr en frankalmoign, ſon Sñr eſt tenus p̃ la ley de luy acquiter de cheſcun maner de ſerpice que alcun ſñr paramount de luy boet aver ou demander de meſmes les tenements: & ſil ne

AND note, that where ſuch man of Religion holds his Tenements of his Lord in Frankalmoign, his Lord is bound by the Law to acquite him of every manner of ſervice which any Lord paramount will have or demand of him for the ſame Tenements: and if he doth not ac-

luy

luy acquita pas, mes ſuffra luy deſtre diſtreine, &c. donqꝫ il avera envers ſon ſeignior un bꝛiefe de Meſne, & recobera envers luy ſes damages & ſes coſtes de ſon ſuit, &c.

quite him, but ſuffereth him to be diſtrained, &c. he ſhal have againſt his Lord a Writ of Meſne, and ſhall recover againſt him his damages and coſts of ſuit, &c.

Acquiter is compounded of ad, and the old verb quietare, and ſignifieth in Law (b) to diſcharge, or keep in quiet, and to ſee that the Tenant be ſafely kept from any entries or other moleſtation for any manner of ſervice iſſuing out of the Land to any Lord that is above the Meſne. (c) And hereof cometh (d) acquitall, and quietus eſt (that is) that he is diſcharged; and he that is diſcharged of a felony, &c. by judgement, is ſaid to be acquited of the felony, acquietatus de felonia; and if he be drawn in queſtion again, he may plead (e) auter foits acquite. And therefore if ſuch a Tenant as Littleton here ſpeaketh of be diſtrained by any Lord paramount, the Meſne (to keep the Tenant quiet) may put his beaſts in the pound, inſtead of the beaſts of the Tenant.

(b) Fleta lib. 2. cap. 43. Britton fol. 58, 59. Vide hereafter in this Sect. in brief de Meſne.

(c) Vide Sect. 142. 347.

(d) 8 E. 2. Coron. 424. 20 E. 2. ibid. 232. Stanf. Pl. Coron. 105.

(e) 4 E. 3. 35. 17 E. 3. 44. 7 H. 4. 18. 34 H. 6. 47. 13 E. 4. 6. F.N.B. 136. Lib 9. fol. 110, 111. in Treſhams caſe.

There be three kinds of Acquitals. 1. An Acquitall by Deed. 2. An Acquitall by Preſcription. 3. An Acquitall by Tenure. And by Tenure four manner of wayes. 1. By oweltie of ſervices, for ſervice acquits ſervice. 2. Tenure in Frankalmoign, whereof Littleton here ſpeaketh. 3. Tenure in Frankmarriage. 4. Tenure by reaſon of Dower.

3 E. 3. 14. 77. 5 E. 3. 11. 4 H. 6. 28. 39 E. 3. 19. 11 H. 4. 52. 12 H. 4. 9. 14 H. 4. 17. F.N.B. 136. b.h. 39 H. 6. 30. 33 H. 6. 7. F.N.B. 135. m. 4 E. 4. 35. 12 H. 4. 9. 28 E. 3. 95. 17 E. 3. 39.

¶ *De cheſcun manner de ſervice.* (f) And yet not of ſervices only, as Homage, Fealty, Rent works, and other ſervices, but alſo of improvement of ſervices, as if he be diſtrained for relief, * Aide pur file marier, aide pur faire fitz chivaler, &c. Alſo for ſuit ſervice to a Hundred. (g) But for ſuit real in reſpect of reſiance within any Hundred, Leet, or Turn, the Meſne ſhall make no acquitall, for that is in reſpect of his perſon and reſiancy.

(f) 39 H. 6. 31. 2. 9 E. 4. 27. F.N.B. 136. m. 17 E. 2. tit. Meſne. 5 E. 3. 49.

* Bracton lib. 2. fol. 84.

(g) 4 E. 3. 42.

¶ *Briefe de Meſne.* Breve de medio, a writ of Meſne, ſo called by reaſon of the words of the writ of Meſne, which are, Unde idem A. qui medius eſt inter C. & præfatum B. A. who is Meſne between C. that is the Lord paramount, and B. that is the Tenant paravail. And note, that there be ſix writs in Law that may be maintained, quia timet, before any moleſtation, diſtreſs, or impleading. 1. A man may have his writ of Meſne, (whereof Littleton here ſpeaks) before he be diſtreined. 2. A Warrantia cartæ, before he be impleaded. 3. A Monſtraverunt, before any diſtreſſe or vexation. 4. An Audita querela, before any execution ſued. 5. A Curia claudenda, before any default of incloſure. 6. A Ne injuſtè vexes, before any diſtreſſe or moleſtation. And theſe be called Brevia anticipantia, Writs of prevention.

For this Writ ſee the Regiſter fol. and F.N.B. fol. 135. Mirror cap. 2. Sect. 13. Bract. lib. 2. fol. 84. Britton fol. 58. Flet. lib. 2. cap. 43. Weſt. 2. cap. 9.

¶ *Et recovera vers luy ſes damages.* It is to be known, that there be two ſeveral judgements in a Writ of Meſne, one at the common Law; another by the Statute of W. 2. cap. 9. At the common Law he ſhall have judgement to recover his acquital, and if he be diſtreined or damnified, his damages and coſts: and the proceſſe at the common Law was Summons, Attachment, and Diſtreſſe infinite, in the ſame County where the Writ is brought. * The judgement by the ſaid Statute of W. 2. is a forejudger of the Meſnualty, and that in two ſeveral caſes: one upon Proceſſe given by the ſaid Statute, viz. Summons, Attachment, and Grand diſtreſſe; and if he cometh not, and the writ be returned, he ſhall be forejudged: the other caſe is, where a Tenant recovereth his acquital in a Writ of Meſne; if he be not acquited afterwards, he ſhall have a Writ of Diſtringas ad acquietandum againſt the ſame Meſne; and if he cometh not, he ſhall be forejudged by his default of the Meſnalty; and ſo if he cometh, and it be found againſt him by verdict, he ſhall be forejudged: but Forejudger in that caſe is not given againſt his heir, for that the Statute ſpeaketh only of the Meſne, and not of his heirs. And the judgement in caſe of forejudgement is, Quod T. (le Meſne) amittat ſervitia de A. (le Tenant) de tenementis prædictis, & quod omiſſo prædicto T. præfat' R. (le Seignior paramount) modo ſit attendens & reſpondens per eadem ſervitia per quæ T. tenuit. The ſaid Statute in caſe of forejudgement doth not bind a Feme covert; and yet if ſuch a judgement be given againſt a Baron and Feme, it is not void, but erroneous, and to be reverſed in a Writ of error; and ſo a forejudgement againſt a Tenant in tail ſhall bind the iſſue in tail in an Avowry, until he reverſeth it by error. If two Joyntenants bring a Writ of Meſne, and the one is ſummoned, and ſevered, the other cannot forejudge the Meſne, for he ought to be attendant to the Lord paramount, as the Meſne was, and that cannot be be alone. And ſo it is if there be two Joyntenants Meſnes, and in a Writ of Meſne brought againſt them one maketh default, and the other appeats, there can be no Forejudger.

W. 2. cap. 9. Vide lib. 8. fol. 134. Mary Shepleys caſe.

* Bracton lib. 2. fol. 84. Fleta lib. 2. cap. 43.

46 E. 3. 31. 18 E. 2. tit. Meſne. F.N.B. 136. 2 H. 4. 7. 17 E. 3. Contra formam Collat. 1. F.N.B. 121.

7 E. 3. 41. tit. Meſne 18. 9 E. 2. ibid. 67. 14 E. 2. ibid. 70. Lib. 9. fol. 73. b. Doct. Huſſeys caſe.

If the Tenant be diſſeiſed, and the Diſſeiſor in a writ of Meſne forejudge the mean, this ſhall not bind the Diſſeiſee. And ſo if the Meſne be diſſeiſed, and a forejudgement is had againſt the Diſſeiſor, this doth not bind the Diſſeiſee; for the words of the ſaid Statute are, Quando tenens ſine præjudicio alterius quam medii attornare ſe poteſt capitali Domino.

But if the daughter, the ſon being en venter ſa mere, be forejudged, it ſhall bind the ſon that is born afterwards, becauſe he had no right at the time of the forejudgement. And ſo if the Tenant enter in Religion, and his heir forejudgeth the Meſne, and then the Anceſtor is deraigned, he ſhall be bound cauſa qua ſupra. If there be Lord, Prior, Meſne, and Tenant, the Meſne cannot be forejudged, becauſe he alone can do nothing to the præjudice or the diſherſon of his Church. And the like Law is of a Biſhop, Parſon, and the like.

19 E. 3. Judgm. 117.

W. 2 cap. 3.

No forejudgement can be, but when there is but one mean between the Lord diſtreining and the Tenant, becauſe the Tenant upon the forejudgement cannot be attendant to the Lord diſtreining, in reſpect there is a mean between them: and ſo the ſaid Statute provideth for in expreſs terms.

Nota, the Plaintiff in a writ of Meſne may chuſe either Proceſſe at the Common Law, or upon the ſaid Statute of W. 2. Forejudgement is called Foris judicatio, and he that is forejudged, Foris judicatus. And Bracton hath this writ, Rex Vicecomiti, &c. & non permittas quod A. capitalis Dominus feodi illius habeat cuſtodiam hæredis, quia in curia noſtra foris judicatur de cuſtodia, &c. Fleta calleth it Abjudicationem, and thereupon cometh abjudicatus; for he ſaith, Poſt Proclamationem, &c. factam, abjudicetur medius de feodo & ſervitio ſuo.

30 E. 3. 23. F. N. B. 137. Bract. l. 4. 256. b. Brit. f. 58. b. Fleta l. 2. c. 43.

Chap. 7. *Homage Auncestrell.* *Sect.* 143.

¶ *Per title de Preſcription en le tenancie en le ſanke le tenant, & auxy en le Seigniorie en le ſanke le Seignior.*

Here Littleton doth not define what Homage Anceſtrell is, but putteth an example in one caſe. For in the 146. Section it appeareth, that blood is not alwayes neceſſary on the Lords ſide. In this example here put there muſt be a double preſcription, both in the blood of the Lord, and of the Tenant; and therefore I think there is little or no land at all at this day holden by Homage Auncestrel.

9 H. 3. Vouch. 277. 47 H. 3. Gar. 99. Temps E. 1. Gar. 90. 4 E. 2. Vouch. 249. 45 E. 3. 43. 11 H. 4. 52. 4 H. 6. 26.

And hereof it is ſaid, Autant eſt le Seignior tenus a ſon homage, come le homage a ſon Seignior, forſque ſolement en reverence. And herewith agreeth Bracton; Eſt tanta & talis connexio per homagium inter dominum & tenentem, quod tantum debet Dominus tenenti quantum tenens Domino, præter ſolam reverentiam.

Brit. fol. 170. 2.

Bract. fol. 78. Glanv. l. 9. c. 4, 5, 6.

¶ *Treit a luy gar-*

¶ Tenure per homage anceſtrel eſt, lou un Tenant tient ſa Terre d̄ ſon Seignior per homage, & meſme le Tenant & les Auncestors que heire il eſt ont tenus meſme le terre del dit Seignior & de les Auncestors que heire le Seigniour eſt, de temps dont memorie ne curt, per homage, & ont fait a eux homage. Et ceo eſt appel homage auncestrel, per cauſe de continuance que ad eſte per title de Preſcription en le Tenancy en le ſanke le Tenaunt, & auxy en le Seignio-

TEnant by homage Auncestrell is, where a Tenant holdeth his land of his Lord by homage, and the ſame Tenant and his Anceſtors whoſe Heir he is have holden the ſame land of the ſame Lord and of his Anceſtors whoſe heire the Lord is, time out of memory of man, by Homage, and have done to them Homage. And this is called Homage Auncestrell, by reaſon of the continuance which hath been by Title of Preſcription in the Tenancie in the blood of the Tenant, and alſo in the Seigniory in

rie

rie|en le cãke le Seignioz. Et tiel Serbice de homage Ancestrel trait a luy garrantie, ceſtaſcaboir, que le Seignioz que eſt en bie, & ad receibe le homage de tiel Tenant, doit garranter ſon Tenant quant il eſt implede de la terre tenus de luy per homage Ancestrel.

the bloud of the Lord. And ſuch ſervice of Homage Auncestrel draweth to it warranty, that is to ſay, that the Lord which is living, & hath received the Homage of ſuch Tenant, ought to warrant his Tenant when he is impleaded of the land holden of him by Homage Auncestrel.

vauty. Hereby appeareth what a reverend reſpect the Law hath to ancient inheritances continued in the bloud of the Lord and of the Tenant: for in this example put, if the continuance hath not bæn in the bloud of both ſides, no warranty belongeth to Homage Ancestrell; but if ancient continuance hath bæn on both ſides, (n) then ſuch Homage Ancestrell draweth to it warranty: ſo as ancient continued inheritance on both parties hath more priviledge and account in Law, then inheritances lately or within memory acquired.

Vide Britton ubi ſupra. 14 H.6.25. 18 H.6.2. b. Glanvil lib.9. ca.4,5, & 6. 9 H.3. Voucher 277. 47 H.3. Voucher 270, 271. 43 E.3.3. a.

(n) See the ſecond part of the Inſtitutes upon the 6. Chap. of the ſtatute of Bigamie.

If the Lord grant the ſervices of his Tenant by Homage Ancestrell, the Tenant ſhall not be compelled in a Per quæ ſervitia to atturn, unleſs the Conuſæ will grant in Court to warrant the Land unto him. 18 H.6.2.b. per Newton.

If the Tenant vouch by force of this warranty in Law, it is a good counterplea, that the Tenant (or any one of his Anceſtors) receſſit de ſervitio ſuo, & fecit ſervitium ſuum A. B. ſine aliqua coactione de ſua propria voluntate. 9 H.3. Voucher 277.

¶ *Et ad receive homage de tiel tenant.* (a) So as before Homage received the Tenant could not abſolutely bind the Lord to warranty; and therefore of ancient time there lay (b) a Writ De homagio capiendo, for the Tenant againſt the Lord, to compell him to receive his homage for the benefit of his Warranty. Which Writ you ſhall read in Bracton and (c) Britton, and the Proceſſe and manner of trial thereupon; and the ſame you ſhall find in 47 H. 3.

(a) 9 H.3. Voucher 277. Temps E. 1. Gar.90. 45 E. 3. 23.
(b) Glanv. lib.9. ca.4,5. & lib.1. cap.3. Bracton lib.2. fol.83.
(c) Britton fol.172,173. 47 H.3. garrantie 99.

Sect. 144.

¶ Et auxy tiel ſerbice per homage Auncestrel trait a luy acquitall, ſ. que le Sñr doit acquiter le Tenant enbers touts auters Sñrs paramont luy de cheſcun maner de ſerbice.

AND alſo ſuch ſervice by Homage Anceſtrel draweth to it acquitall, s, that the Lord ought to acquit the Tenant againſt all other Lords paramont him of every manner of ſervice.

¶ *Trait a luy acquital.* Of acquittall ſomewhat hath bæn ſaid in the Chapter of Frankalmoigne. Sect. 142. & 540.

Sect. 145.

¶ Et il eſt dit, q̃ ſi tiel tenant ſoit emplee p un Præcipe quod reddat, &c. & il vouche a garrantie ſon ſeignioz, que vient eins p proces, & demanda del tenant que il ad de luy lier a

AND it is ſaid, that if ſuch Tenant be impleaded by a *Præcipe quod reddat*, &c. and vouch to warrantie his Lord, who cometh in by Proceſs, and demands of the Tenant what he hath to bind

¶ *UN Præcipe quod reddat.* This is underſtood of the Kings writ directed to the Sheriff of the County where the Land lieth, whereby the Sheriff is authoriſed to command the Tenant of the Land to yield the ſame to the Demandant; and of theſe words of the Writ (Præcipe quod reddat) the Writ is ſo called. Writs of

of Præcipe be of four kinds; Præcipe quod reddat, Præcipe quod faciat, Præcipe quod permittat, & Præcipe quod non permittat, &c. as appeareth by the Regiſter.

Regiſt. 159.

¶ *Et il vouche a garrantie.* A Voucher, in Latine vocatio, or advocatio, is a word of Art, made of the Verb voco, and is in (d) the underſtanding of the Common Law, when the Tenant calleth another into the Court that is bound to him to Warrantie, that is, either to defend the right againſt the Demandant, or to yield him other Land, &c. in value: and extendeth to Lands or Tenements of an eſtate of Freehold or inheritance, and not to any Chattel real, perſonal, or mixt, ſaving only in caſe of a Wardſhip granted with warranty, (as ſhall be ſaid more at large in the Chap. of Warranties;) for in the other caſes concerning Chattels, the party, if he hath a warranty, ſhall not vouch, but have his action of Covenant; if he hath a Deed, or if it be by Parol, then an action upon his Caſe, or an action of Deceit, as the caſe ſhall require. Now ſeeing that one Latine, French, or Engliſh word can have this particular ſignification; therefore the Common Lawyer (that I may ſpeak once for all) is driven, as the profeſſors of other liberall ſciences uſe to do, to uſe ſignificant words framed by art, which are called vocabula artis, though they be not proper to any language. He that voucheth is called the Voucher, vocans, and he that is vouched is called Vouchee, Warrantatus. (e) The proceſſe whereby the Vouchee is called is a Summoneas ad Warrantizandum; whereupon if the Sheriff returneth, that the Vouchee is ſummoned, and he make default, then a (f) Magnum cape ad valentiam is awarded; and if he make default again, then judgment is given againſt the Tenant, and he ober to have in value againſt the Vouchee. If the Vouchee do appear, and after make default, then Parvum cape ad valentiam is awarded; and if he make default again, then judgment as before. But if the Sheriff return, that the Vouchee hath nothing, then after writs of Alias and Pluries, a writ of Sequatur ſub ſuo periculo ſhall be awarded; and if the like return be made, then ſhall the Demandant have judgment againſt the Tenant, but he ſhall not have judgment to recover in value, becauſe the Vouchee was never warned, and it appeareth that he hath nothing: but in the grand Cape ad valentiam, it appeareth that he hath aſſets; and his making default after ſummons is an implied confeſſion of the Warranty. And it is called a Sequatur ſub ſuo periculo, becauſe the Tenant ſhall loſe his land

(d) Mir. cap. 5. ſect. 1. & 5. Bract. li. 5. fo. 380, 381. Brit. c. 75. de Gar. Vouch. Fleta lib. 6. c. 23, 24, 25. 26, &c. optime. Lamb. Expl. Verb. Advocate.

(e) Vid. Reg. Jud. for all theſe judicial Writs.
(f) V. Vet. N.B. 179. 186. 39 E. 3. 28. 14 H. 6. 7. 17 E. 3. 41. 3 H. 4. 4. 11 H. 4. 72. 45 E. 3. 19. F.N.B. 134, 135.

garranty, & il mẽ coment il & ſes Auncеſtors, q̃ heire il eſt, ount tenus ſa terre del vouchée & de ſes auncеſtors de temps dont memorie ne curt; et ſi l' Seignior que eſt vouche ne avoit receive pas homage del tenant, ne dalcun de ſes auncеſtors, le Seignior (ſil voit) poit diſclaimer en le ſeigniory, & iſſint ouſte le tenant de cõ garrãty. Mes ſi le Sir q̃ eſt vouche ad receive homage de le Tenant, ou de alcun de ſes Auncеſtors, donques il ne diſclaimera, mes il eſt oblige p la ley de garranter le tenant: & dõcz ſi le tenant perd ſa cre & default del vouchee, il recovera en value envers la vouchée de terres & tenements que le vouchée avoit al temps de le voucher, ou unques puis.

him to warranty, & he ſheweth how he & his Anceſtors, whoſe heir he is, have holden their Land of the Vouchee and of his Anceſtors time out of mind of man; and if the Lord which is vouched hath not received homage of the Tenant, nor of any of his anceſtors, the Lord (if he will) may diſclaim in the Seigniory, and ſo ouſte the tenant of his Warranty. But if the Lord who is vouched hath received homage of the tenant, or of any of his Anceſtors, then he ſhall not diſclaim, but he is bound by the Law to warrant the Tenant: and then if the Tenant loſeth his land in default of the Vouchee, he ſhall recover in value againſt the Vouchee of the Lands and Tenements which the Vouchee had at the time of the Voucher, or any time after.

land without any recompence in value, unleſs he upon that Writ can bring in the Voucher to warrant the land unto him. And if at the Sequat' ſub ſuo periculo the Tenant and the Voucher make default, and the Demandant hath judgment againſt the Tenant, and after brings a Scire fac' to have execution, the Tenant may have a Warrantia cartæ, and if he were impleaded by a ſtranger, he may vouch again: but if he had judgment to recover in value, he ſhall never have a Warrantia cartæ, or vouch again; for by this judgment to recover in value he hath benefit of the Warranty. And you ſhall find in Books a recovery with a ſingle Voucher, and that is, when there is but one Voucher; and with a double Voucher, and that is, when the Voucher voucheth over; and ſo a treble Voucher, &c. Again, you ſhall find there alſo a forrein Voucher, and that is, when the Tenant being impleaded within a particular juriſdiction (as in London or the like) voucheth one to warranty, and prays that he may be ſummoned in ſome other County out of the juriſdiction of that Court: this is called a forrein Voucher, but might more aptly be called a Voucher of a Forreiner, de forinſecis vocatis ad warrantizandum. Note, that by the Civil Law every man is bound to warrant the thing that he ſelleth or condeyeth, albeit there be no expreſs Warranty: but the Common Law bindeth him not, unleſs there be a Warranty either in Deed or in Law, for Caveat emptor, as ſhall be ſaid more at large in the Chapter of Warranty in the third Book. Glouc. ca.12. F.N.B. 6. e.

¶ *Le Seignior (ſil voet) poet diſclaimer* (u) *en le Seigniorie. Diſclaimer, diſclamare*, is compounded of de and clamo, and ſignifieth utterly to renounce the Seigniory. (u) Brit. 174.

(a) Note, there be diders kinds of Diſclaimer: that is to ſay, a Diſclaimer in the tenancy; a Diſclaimer in the bloud; and a Diſclaimer in the Seigniory; whereof Littleton here putteth his caſe. (a) 47 H.3. Diſclaim. 35. 16 H.7.1. 20 E.2. tit. Nuper ob. 14.F.N.B. 197. & 151. b. 45 E.3.19.

(b) But if the Tenant in Frankalmoign bring a Writ of Meſne againſt his Lord, the Lord cannot diſclaim in the Seigniory, becauſe he cannot hold of any man in Frankalmoign, but of his Donor and his heirs. And ſo note a diverſity between a Tenure in Frankalmoign, whereby Divine Service is maintained, and Homage Auncestrel, which reſpecteth temporal Service. But if the Lord will not diſclaim in the Seigniory, in the caſe of Homage Auncestrel, then albeit he hath not received Homage, he ſhall warrant the land. 21 E.3. 30 E.3.23.&c. (b) 14 H.3. tit. Diſclaim. b. 33.

¶ *Si le Seignior que eſt vouche ad receive homage, &c. il ne diſclaimera.* Therefore it is good for the Tenant, to the intent to ouſt the Lord of his Diſclaimer, in his Voucher to alleage, that the Lord hath taken Homage of him; and if he alleage it not, and the Lord offer to diſclaim, the Tenant may counterplead the ſame by acceptance of Homage: and the reaſon that the Lord cannot diſclaim in that caſe is, for that he hath accepted his humble and reverent acknowledgment to become his man of life and member and terrene honor; and to be faithful and loyal to him for the Tenements which he holds of him, and againſt the acceptance hereof the Lord cannot diſclaim. 47 H.3. Diſclaim. 35. Vid. Bract. l.4.252. b. 16 H. 7. 1. Brit. 173, 174.

¶ *Que il avoit al temps del voucher.* Hereby it appeareth, that the Tenant ſhall not be driven to recover in value only thoſe lands which the Lord had from that Anceſtor which created the Seigniory, for that were in manner impoſſible, for that the Seigniory muſt be created before time of memory, and the firſt creation of the Seigniory did not create the Warranty, but the continuance of both ſides time out of mind created the Warranty. And that is the reaſon that a writ of Annuity ſhall not (c) lie againſt the heir by preſcription, becauſe it cannot be known whether he hath any land by deſcent from the ſaid Anceſtor that firſt granted the Annuity. And here is a point worthy of obſervation, that in the caſe of Homage Auncestrel, (which is a ſpecial Warranty in Law) by the authority of Littleton, the lands generally that the Lord hath at the time of the Voucher ſhall be liable to execution in value, whether he hath them by deſcent or purchaſe. But in the caſe of an expreſs Warranty, the heir ſhall be charged but only for ſuch lands as he hath by deſcent from the ſame Anceſtor which created the Warranty. (c) 49 E.3.5.b. 10 E.4. 10. b. 19 H.6.74. 37 H.6.19. 5 H.7.F.N.B.152.

Note what privilege this ancient Warranty (created by operation of Law) hath more then the expreſs Warranty. And ſo you may obſerve that in this caſe, firmior & potentior eſt operatio legis quam diſpoſitio hominis. (d) 28 E.1. Vouch.291. 9 Ed. 2. War. Car.20.19. Fines 127.

¶ *Al temps de voucher, ou unques puis.* This is evident and worthy of diligent obſervation, viz. that the lands of the Voucher ſhall be liable to the Warranty that the Voucher hath at the time of the Voucher; for that the Voucher is in lieu of an action; and in a Warrantia cartæ, the land which the Defendant hath at the time of the Writ brought ſhall be liable to the Warranty. 29 E.3.3. 18 E.3.1. 2 H. 4.10. 23 E.3. Recov. in value 3. 16 E.3. Vouch. 85. 19 E.3. Vouch. 24. 22 Edw. 3. Fitz. Nat. Bre.134. f.

Upon a Judgment in Debt, the Plaintiff (d) ſhall not have execution but only of that land which the Defendant had at the time of the judgment, for that the action was brought in reſpect of the perſon, and not in reſpect of the land. But if an action of Debt be brought againſt 2 H.4.14. 42 E.3.1. 42 Aſſ. 17. 9 E.2. tit. Execut.249.

against the heir, and he alieneth, hanging the Writ, yet shall the land which he had at the time of the original purchase be charged, for that the Action was brought against the heir in respect of the land. (c) If a man be Nonsuit, the land only which he had at the time of the amerciament assessed shall be charged, and not that which he had at the finding of the pledges. For the amerciament is not in respect of the land, but of his want of prosecution, which was a default in his person. But the issues of a Juror shall be levied upon the Feoffee, albeit they were not lost before the Feoffment, because he was returned and sworn in respect of the land. Note the diversity.

(c) 22 Ass. pl. 32.

If a man give lands in fee with warranty, and bind certain lands specially to Warranty, the person of the Feoffor is hereby bound, and not the land, unless he hath it at the time of the Voucher.

32 E. 1. Voucher 292.

Sect. 146.

¶ *Son Seigniorie est extinct, & le Tenant tiendra de Seignior prochein paramount, &c.*

¶ Et est a scavoir, que en chescun cas ou le Seignior poit disclaimer en sõ Seigniorie p la Ley, & de ceo voit disclaim en Court de Record, son Seigniorie est extinct, & le Tenant tiendra del Seignior prochein paramont le Seignior que issint disclaime. Mes si un Abbe ou Prior soit vouch per force de homage Auncestrell, &c. comment que il ne unque prist homage, &c. uncore il ne poit disclaimer en tiel cas, ne en nul auter cas, car ils ne poient anienter ou divester chose de fee que ad este vestue en lour mesne.

AND it is to be understood, that in every case where the Lord may disclaim in his Seigniory by the Law, and of this he will disclaime in a Court of Record, his Seigniory is extinct, and the Tenant shall hold of the Lord next paramount to the Lord which so disclaimeth. But if an Abbot or Prior be vouched by force of Homage Auncestrel, &c. albeit that he never took Homage, &c. yet he cannot disclaim in this case, nor in any other case, for they cannot take away or devest a thing in fee which hath been vested in their house.

Here two things are to be observed: First, that by this disclaimer in the Seigniory the Seigniory is (f) extinct in the land.

(f) 45 E. 3. 7. 22 E. 4. 35.

Secondly, that after the Disclaimer the Tenant shall hold of the next Lord paramount by the same Services as the mesne so disclaiming held before.

Vide Britton fo. 58. 110.

¶ *Si un Abbe ou Prior soit vouch, &c. comment, &c. Uncore il ne poet disclaimer, &c.*

Here it appeareth of the Lords side, that continuance of bloud is not necessary, but yet there must be privity of succession time out of mind in one politick body; for if that body be once dissolved, though a new be founded of the same name, and all the possessions be granted to them, yet the Homage Auncestrell is gone. But if a Prior and Covent be translated, concurrentibus hiis quæ in jure requiruntur, to an Abbot and Covent, or to Dean and Chapter, there the Homage Auncestrel remains; for though the name be changed, yet the body was never dissolved, but in effect it remaineth still. If the body Politick were founded within time of memory, there cannot be Homage Auncestrel, for that continuance faileth: and though Ancestor is ever properly applied to a natural body, yet it is called Homage Auncestrel when the tenure is of a body Politick, for that it is Auncestrel of the Tenants side: but on the other side, an Abbot or Prior cannot hold by Homage Auncestrel, for, as appeareth by Littletons examples, it must ever be Auncestrel of the Tenants side. And where Littleton putteth his case of an Abbot or Prior, the same Law is of a Bishop, Dean Archdeacon, Prebend, Parson, Vicar, and the like. Another thing here to be observed is, That an Abbot or Prior cannot disclaim, &c. for regularly it is true. Quod meliorem conditionem Ecclesiæ suæ facere potest Prælatus, deteriorem nequaquam; and again, Ecclesiæ suæ conditionem meliorem facere possunt

14 H. 6. 12. 2 H. 6 9. 38 Ass. p. 22. 37 Ass. 6. Lib. 3. fo. 73, &c. Dean and Chap. de Norwich Case.

possunt sine consensu, deteriorem non possunt sine consensu. And therefore an Abbot, Prior, Bishop, Dean, Archdeacon, Prebend, Parson, Vicar, or any other sole Corporation that is seised in auter droit, cannot disclaim, because, as Littleton saith, they alone cannot devest any fee which is vested in their House or Church. For the wisdom of the Law would never trust one sole person with the disposition of the Inheritance of his House or Church: But an Abbot and Prior had their Covent, the Bishop his Chapter, the Parson and Vicar their Patron and Ordinary, and the like of other sole Corporations, without whose assent they could passe away no Inheritance. 40 E.3.27. 5 E.4.1. 6 E.3.51,52. 10 E. 4. 2. 2. 21 H. 7. 20.

¶ *Ils ne poient anienter ou devester chose de fee, &c.* These generall words have certain exceptions; for in a Quo warranto at the suit of the King against a Bishop, Abbot or Prior, for Franchises and Liberties, if the Bishop, Abbot or Prior disclaim in them, this should bind their Successors. If an Abbot or Prior had acknowledged the Action in a Writ of Annuity, this should have bound the Successor, because he cannot falsifie it in an higher action, and there must be an end of Suits. Expedit Reipublicæ ut sit finis litium. But if the Abbot levy a fine, or acknowledge the action in a Præcipe quod reddat, the Successor shall be bound pro tempore; but he may have a Writ of Right, and recover the land. 6 E. 3. 51, 52. 38 E.3.33. 16 E. 3. tit. Abbot 13. 19 E. 3. tit. Abbot 13. 7 R.2. Abbot 7.12 H.4.11.20 H.6. fol. ultimo.4 H.7.2. 2 H.4.6. 34 Ass.p.7. 14 E.4. tit. Abbot B. 8 E.3.28. 12 H. 8. 7.

¶ *Per force de Homage Auncestrell, &c.* Here (&c.) implieth or by any other Warranty, (i) as by the reason which our Author here yieldeth appeareth. (i) 12 H. 8. 7.

¶ *Chose de fee.* (k) For if in an action of Debt upon an obligation against an Abbot, the Abbot acknowledgeth the Action, and dieth, the Successor shall not avoid Execution, though the Obligation was made without the assent of the Covent, for he cannot falsifie the recovery in an higher action: Et res judicata pro veritate accipitur: and this is but a Chattel. And so it is of a Statute or Recognisance acknowledged by an Abbot or Prior. (k) 7 R.2. tit. Abbot 7. See the Books next above.

Sect. 147.

¶ Item si home q̃ tient son terre p̃ homage auncestrel a lien a un auter en fee, le alienee ferra homage a son Seignior, mes il ne tient de son Seigniour per homage Auncestrell, pur ceo q̃ le tenancie ne fuit continue en le sanke de les auncestors lalienee; ne lalienee navera james garrantie d̃ la terre d̃ son ffir, pur ceo que le continuance del tenancie en le tenant q̃ a son sanke per lalienation est discontinue. Et sic vide, que si le tenant que tient la terre per homage auncestrell de son Seig-

ALso if a man which holds his land by homage Auncestrell alien to another in fee, the Alienee shall do homage to his Lord, but he holdeth not of his Lord by homage Auncestrel, because the Tenancy was not continued in the bloud of the Ancestors of the Alienee; neither shall the Alienee have warranty of the Land of his Lord, because the continuance of the tenancy in the Tenant and to his bloud by the alienation is discontinued. And so see, that if the Tenant which holdeth his Land of his Lord

¶ A *Lien a un auter en fee.* For hereby the privity of the estate is altered, and the continuance of it in the bloud of the Tenant is dissolved. But if the Tenant maketh a Lease for life, or a gift in tail, this is a continuance of the privity and estate in the Tenant in respect of the reversion that remaineth in him: for the fee, whereof Littleton here speaketh, was not out of him. But if the Tenant maketh a feoffment in fee upon condition, and dieth, his heir performeth the condition, and re-entreth, the Homage auncestrell is destroyed in respect of the interruption of the continuance of the privity and estate. And this case was put and not denied in the argument (m) of the case between the Lord Cromwell and Andrews, Mich. 14 & 15 Eliz. which I my self heard and observed. As if Cestuy que use had made a feoffment in fee upon condition, and entred for the condition broken, he should have retained the Land against (m) 1 Mich. 14 & 15 Eliz. 5 H. 7.

gainſt the Feoffees for ever, for that the eſtate and privity was for the time taken out of the Feoffees, and thereby diſſolved for ever. But if the Land were recovered againſt the tenant upon a faint title, and the Tenant recover the ſame again in an action of higher nature, there the Homage auncestrell remains, for the right was a ſufficient mean for the continuance: ſo it is if he had reverſed it in a writ of Error. (n) If the alienee be impleaded in Littletons caſe, and vouch the alienor that held by Homage Auncestrel, albeit he cometh in by action of Law to many purpoſes in privity of his former eſtate; yet to this purpoſe he cannot come in as Tenant by Homage Auncestrell, becauſe of the diſcontinuance of the eſtate and privity, and, as Littleton ſaith, the Tenancy was not continued in the bloud. (o) And Britton ſaith, Et come aſcun requedent ſoit Vouche per Homage, & le Seigniour tende de averrer que le tenement dount il vouche fuit tranſlate hors del ſanke del primer purchaſer per feoffment, ou per aſcun auter tranſlation; en tiel caſe ſoit le tenant charger de voucher ſon feoffor ou ſes heires.

nior alien en fee, coment que il repriſt eſtate de lalienee arere en fee, il tient la terre p homage, mes nemy per homage auncestrell.

by Homage auncestrell alieneth in fee, though he taketh an eſtate again of the alienee in fee, yet he holds the land by homage, but not by Homage auncestrell.

(n) 5 E.3. 11. per Cantrel.

(o) Britton fol. 170. a.

¶ *Coment que il repriſt eſtate del alienee en fee, &c.* For the cauſe aforeſaid, in reſpect of the interruption of the privity and continuance of the eſtate. And herewith agree our Books in caſes of Warranties in Deed, or Warranties in Law. See more of this in the Chapter of Warranties.

38 E.3.20. 11 H.4.22. 17 E.3.47.59.73.74. 26 E.3.56. 18 E.3.56. 16 E.3. Voucher 87. 28 E.3.30. 44 E. 3. Littleton fol. 169.

Sect. 148.

¶ *Ne ferra homage al Fits.*

If A. holdeth of B. as of the Manor of Dale, whereof B. is ſeiſed in tail, B. diſcontinueth the eſtate tail, and taketh back an eſtate in Fee ſimple, A. doth homage to B. B. dieth ſeiſed, the iſſue in tail entreth; A. ſhall do homage again to the heir in tail of B. becauſe he is remitted to the eſtate tail; and the eſtate in fee that his Father had, in reſpect whereof the homage is done, is baniſhed, and the heir in tail is in of a new eſtate, in reſpect whereof he ought to do a new homage.

¶ Item il eſt dit, que ſi home tient ſa terre de ſon Seignior per homage & fealty, & il ad fait homage & fealty a ſon ſeignior, & le ſeignior ad iſſue fits, & deby, & le ſeigniory diſcendiſt a le fits; en ceo cas le Tenant que fiſt homage al pere ne ferra homage al fits, pur ceo que quant un tenant ad fait un foits homage a ſon Seignior, il eſt excuſe pur terme de ſa vie de faire homage a aſcun auter heire del Seignior; mes uncore il ferra fealty al fits & heire le Seignior, coment que il fiſt fealty a ſon pere.

ALſo it is ſaid, that if a man holds his Land of his Lord by Homage and Fealty, and he hath done homage and Fealty to his Lord, and the Lord hath iſſue a ſon, and dies, and the Seigniory deſcendeth to the ſon; in this caſe the Tenant which did homage to the Father ſhall not do homage to the Son, becauſe that when a Tenant hath once done homage to his Lord, he is excuſed for term of his life to do homage to any other heir of the Lord; but yet he ſhall do fealty to the ſon and heir of the Lord, although he did fealty to his Father.

(p) Britton 175, 176.

(p) But regularly it is true which Littleton ſaith, that when a Tenant hath done once homage to his Lord, he is excuſed for term of his life to make homage to any other heirs of the Lord. But he ſhall do fealty to his Son, albeit he hath done fealty to the Father.

Sect.

Sect. 149.

¶ Item ſi le Sñr, apꝛes l' homage a luy fait per ſon tenant, grant le ſervice de ſon tenant per le fait a un auter en fee, & le tenant atturna, &c. donque le Tenant ne ſerra my compel de faire homage, mes il ſerra fealty, coment que il fiſt fealtie devant a le grauntoꝛ. Car fealty eſt incident a cheſcū atturnement del Tenant, quant le Sñrie eſt graunt. Mes ſi alcun home ſoit ſeiſie dū mannoꝛ, & un auter home tient de luy la terre come del mannoꝛ avantdit per homage, le quel Tenant ad fait homage a ſon Sñr q̄ eſt ſeiſie del mannoꝛ, ſi apꝛes un eſtrange poꝛt Præcipe quod reddat envers le Sñr del mannoꝛ, & recovera le mannoꝛ envers luy, & ſuiſt execution: en teſt caſe le tenant ſerra auterfoits homage a celuy que recovera le mannoꝛ, coment que il fiſt homage devant, p̄ ceo que leſtat celuy que receivoit le pꝛimer homage eſt defeate per l' recovery;

ALſo if the Lord, after the Homage done unto him by the Tenant, grant the ſervice of his Tenant by Deed to another in fee, and the Tenant atturneth, &c. the Tenant ſhall not be compelled to do homage, but he ſhall do fealty, although he did fealty before to the Grantor. For fealty is incident to every atturnment of the Tenant, when the Seigniory is granted. But if any man be ſeiſed of a Mannor, and another holds of him the Land as of the Mannor aforeſaid by Homage, which Tenant hath done homage to his Lord who is ſeiſed of the Mannor, if afterwards a ſtranger bringeth a *Præcipe quod reddat* againſt the Lord of the Mannor, and recovereth the Mannor againſt him, and ſues Execution: in this caſe the Tenant ſhall again do homage to him which recovered the Mannor, although he had done homage before, becauſe the eſtate of him which received the firſt homage

¶ *Item ſi le Seignior, &c. grant le ſervice de ſon Tenant per fait, &c.* Britton 176.

Note a diverſity, when the Lord alieneth the Seigniory, and when the Tenant alieneth the tenancy: For when the Tenant hath done homage, and the Seigniory is transferred to another either by the act of the party, as alienation, or by act in Law, as deſcent, yet the Tenant ſhall not iterate homage, as he ſhall do fealty: but when the tenant doth homage, and alieneth the tenancy, there is a new Tenant which never did homage, and therefore he ought to do homage to the Lord, albeit his Alienor had done it before. And it is to be obſerved, that none ſhall do * homage but the Tenant of the land to the Lords of whom it is holden; and therefore if homage be due to be done by the Tenant, if the Tenant alieneth the Land to another, the Alienor cannot be compelled to do homage. 13 E.1. tit. Per quæ ſervitia 22. & tit. Gar. 91. * 8 E. 4. 27. b.

¶ *Attorne, &c.* Here by (&c.) it is to be underſtood, that albeit he pay his rent, perform his annual ſervices, and do Fealty, which is a part of homage, yet homage he ſhall not do.

¶ *Mes ſi aſcun home ſoit ſeiſie dun mannor, &c.* Here it appeareth, that the caſe of the recovery of the Seigniory differeth from the alienation of the Lord, which is his own act, or the deſcent of the Seigniory to the heir, which is an act in Law. And the reaſon of this diverſity is, for that by the recovery the ſtate of him that received the homage is defeated; for it ſhall not lie in the mouth of the Tenant to fruſtrate or defeat the recovery which was againſt his Lord of the Mannor, or Seigniory. Vide Sect. 551. 33 E.3. Avowry 255. 37 H.6.33. 39 H.6.34. 7 H.7.11. Doct. & Stud. fol.45. 28 H.8. Dier 41.

niory, for that the Tenant had nothing therein, and every man by Law ought to meddle in such cases with that which belongeth unto him: which is worthy of observation concerning falsifying of Recoveries.

Note, that to falsify, in legall understanding, is to prove false, that is, to avoid, or, as Littleton here saith, to defeat, in Latine falsare, seu falsificare, i. falsum facere.

7 H.8. cap.4. But since Littleton wrote, it is recited by Act of Parliament, That whereas divers, &c. have suffered recoveries against them of divers Manors, &c. for the performance of their Wills, for the surety of their wives joyntures, &c. and the Recoverors had no remedy to compell the Freeholders and Tenants, &c. to attourn unto them, nor could by order of Law attain to the Rents, Services, &c. that Act doth give the Recoverors power to distrain and avow: whereupon many have thought that this doth impugne Littletons case of the Recovery. But distinguendum est: Littleton intendeth his case either upon a recovery by title, (as he saith, that the state of the Tenant in the Recovery is defeated,) or without any colour upon pretence of Title, which is all one; for the Tenant cannot falsify, and the Lord shall avow as one that came in of a former Title. And Littleton hath good authority in Law to warrant (a) his opinion, and the Statute of 7 H. 8. extendeth to common Recoveries had by consent and agreement, as appeareth by the Act it self, which then was and yet is a common assurance and conveyance, whereof the Law taketh notice, and whereupon (as appeareth by the Act) an use might be limited. So as it is apparent, that such Recoverors came in meerly under the state of the Lord, &c. and had no remedy (as the Statute saith) to compell the Freeholders and Tenants to attourn, and without attournment could neither distrain nor avow. Wherefore this Statute gave Recoverors remedy to distrain, and a form to avow and justify, which they had not before, as it appeareth by the Doctor and Student, who lived at that time. The body of the Act is, That such Recoverors may distrain and make avowry, &c. as those persons against whom the said Recovery is should have done, &c. if the same Recovery had not been had, and have like remedy, &c.

(a) 39 H.6.22. 37 H.6. 38. 35 H.6.22.

28 H.8. Dier 41. If a man had made a Lease for years to begin at Michaelmas, reserving a Rent, and before Michaelmas he had suffered a common recovery, the Recoveror should distrain for that Rent, which the Lessor before the Recovery could not. But if the Recovery had not been had, then he might have distrained, and so it is within the Statute. But if a Fine had been levied of a Manor, and before attournment the Conusee had suffered a common Recovery, the Recoveror should not distrain, &c. because the Conusee against whom the Recovery was had could not.

But this Act extended only to Distresses and Avowries for Rents, Services and Customs, and gave also a form of a Quare impedit. But upon this Statute it was holden, That the Recoveror could not have an action of Debt against the Lessee for years, nor an action of waste against Tenant for life or years; and therefore remedy was provided in these cases by the Statute of 21 H. 8.

21 H.8.cap.15.

Sect. 150.

¶ *Vient a son Seignior.* The Tenant ought to seek the Lord to do him homage, if the Lord be within England; for this service is personal as well of the Lords side as of the Tenants; for law requires

¶ Item si un Tenant que doit per son Tenure faire a son Seignior Homage vient a son Seignior, & dit a

is defeated by the recovery, and it shall not lie in the power of the tenant to falsifie or defeat the recovery which was against his Lord. And so see a diversity in this case, where a man cometh to a Seigniory by recovery, and where he cometh to the same by discent or grant.

& ne gerra en la bouche le Tenant a fauxer ou defeater le recoverie que fuit envers son Seignior. Et sic vide diversitatem en ceo case lou home vient a le Seignior per recovery, & lou il vient per discent ou per graunt al Seignior.

Also if a Tenant which ought by his Tenure to do his Lord Homage cometh to his Lord, and saith unto him, Sir, I luy,

luy, Sir, jeo doy a vous faire homage pur les Tenemẽts q̃ jeo teigne de vous, & jeo sue jcy prist a vous faire hõage pur mesmes les Tenements, pur q̃ jeo vous pry q̃ ore ceo voiles receiver de moy.

ought to doe homage unto you for the Tenements which I hold of you, and I am here ready to do homage to you for the same Tenements, and therefore I pray you that you would now receive the same from me.

reth order and decency. And therefore Bracton saith, Et sciendum, quod ille qui homagium suum facere debet, obtentu reverentiæ quam debet Domino suo, adire debet Dominum suum ubicunque inventus fuerit in regno, vel alibi, si possit commodè adiri, & non tenetur Dominus quærere suum tenentem, & sic debet homagium ei facere. And the same Law it is for Fealty. And the diversity between these services and the rent is, because that these are personal, and the rent may be paid and received by other; and therefore a tender of the rent upon the land is sufficient.

Bracton fol. 80. a. And Britton fol. 171. agreeth herewith.

Sect. 151.

¶ Et si le Sir adonques refusa de ceo receiver, donqs apres tiel refusal le Sir ne poet distreiner le Tenãt p̃ le homage aderere, devant que le Sir requiroit le Tenãt de faire a luy hõage, & le Tenant a ceo faire refusa.

AND if the Lord shall then refuse to receive this, then after such refusal the Lord cannot distrein the Tenant for the homage behinde, before the Lord requireth the Tenant to do homage unto him, and the Tenant refuse to do it.

¶ And the reason hereof is, for that when the Tenant hath done his endeavour and duty to offer his corporal service, and the Lord refuseth the same, or doth not accept his service upon his tender thereof, (which is a refusal in Law) then the Law in respect of the Lords fault requireth, that before the Lord can distrein for it, that he doth require the tenant to doe that service; and if he either refuse to doe it, or doe it not when he is required, it is a refusall in Law.

Vide Bract. fol. 83. Britton 171, 172. 21 E. 3. 24. 22 Ass. p. 73. 20 E. 3. Avowry 223. 43 E. 3. 9. 7 E. 4. 4. 21 E. 4. 17. 20 H. 6. 31.

Sect. 152.

¶ Item hõe poit tener sa terre p̃ homage Auncestrel & per Escuage, ou per auter service de Chivaler, auxibien sicome il poit tenir sa terre p̃ homage Auncestrel en Socage.

ALso a man may hold his Land by Homage Auncestrel and by Escuage, or by other Knights Service, as well as he may hold his land by Homage Auncestrel in Socage.

¶ So as Homage Auncestrell may belong as well to a tenure by Escuage or Knights service, as to a tenure in Socage, or to a tenure in nature of Socage, whereof there hath somewhat been spoken in the Chapter of Socage.

CHAP. 8. *Grand Serjeanty.* *Sect.* 153.

¶ *Tenure per grand Serjeanty.* Serjeanty cometh of the French word (Sergeant) i. Satelles, & (a) Serjeantia idem eſt quod ſervitium. And it is called (b) Magna Serjeantia, or Serjanteria, * or Magnum ſervitium, great ſervice, as well in reſpect of the excellency and greatneſs of the perſon to whom it is to be done, (for it is to be done to the King only) as of the honour of the ſervice it ſelf: and ſo Littleton himſelf in this Section ſaith, that it is called Magna Serjeantia, or Magnum Servitium, becauſe it is greater and more worthy then Knights Service, for this is revera Servitium Regale, and not Militare onely. Fleta ſaith, Magna autem ſerjeantia dici poterit, cum quis ad eundum cum Rege in exercitu cum equo cooperto vel hujuſmodi ad patriæ tuitionem fuerit feoffatus.

(a) Glanvil lib. 9. cap. 4.

(b) Bracton lib. 2. 35. & 84, 85. lib. 1. cap. 10. * Fleta lib. 1. cap. 10. lib. 2. cap. 9. in fine. Britton cap. 66. fol. 164, 165. Ockam cap. quod non abſolvitur.

45 E. 3. 25. per Finchden. Fleta ubi ſupra.

¶ *De noſtre Seignior le Roy.* This Tenure hath ſeven ſpecial properties. 1. To be holden of the King only. 2. It muſt be done when the Tenant is able in proper perſon. 3. This Service is certain and particular. 4. The Relief due in reſpect of this Tenure differeth from Knights ſervice. 5. It is to be done within the Realm. 6. It is ſubject to neither Aid pur faire fitz chivalier, or file marier. And 7. It payeth no Eſcuage.

Bracton lib. 2. 84. 11 H. 4. 34. 10 H. 4. Avowry 267. F. N. B. 83. 10 H. 6. anc. demeſne 11.

¶ *Come de porter le banner de noſtre Seignior le Roy, ou de ameſner ſon hoſt.* This great Service to the King may (as it appeareth hereby) concern the warrs and matters mi-

23 H. 3. tit. Gard. Stat. de Ward & relev. 28 E. 1.

¶ Tenure per graund ſerjeantie eſt, lou un home tient ſes terres ou tenemẽts de noſtre Sñr l'Roy per tiels ſervices que il doit en ſon proper perſon fair al Roy; cõe de porter l' banner de noſtre ſñr le Roy, ou ſa lãce, ou d'ameſner ſõ hoſte, ou deſtre ſon marſhal, ou de porter ſon eſpée devant luy a ſon corronement, ou deſtre ſ̃ ſewer a ſon corronement, ou ſon Carver, ou ſon Butler, ou deſtre un de ſes Chamberlains de le reſceit de ſon Eſchequer, ou de faire auters tiels ſervices, &c. Et la cauſe que tiel ſervice eſt appell grand Serjeanty eſt, p̃ ceo que il eſt pluis grand & pluis digne ſervice que eſt le ſervice en le tenure deſcuage. Car celuy q̃ tient p̃ Eſcuage neſt pas limite per ſa tenure de faire alcun pluis eſpecial ſervice que alcun auter que tient per eſcuage doit faire. Mes celuy que

TEnure by grand Serjeantie is, where a man holds his Lands or Tenements of our Soveraign Lord the King by ſuch ſervices as he ought to do in his proper perſon to the King; as to carry the banner of the King, or his lance, or to lead his army, or to be his Marſhall, or to carry his ſword before him at his Coronation, or to be his Sewer at his Coronation, or his Carver, or his Butler, or to be one of his Chamberlains of the receipt of his Exchequer, or to doe other like ſervices, &c. And the cauſe why this ſervice is called grand Serjeanty is, for that it is a greater and more worthy ſervice then the ſervice in the Tenure of Eſcuage. For he which holdeth by Eſcuage is not limited by his Tenure to doe any more eſpecial ſervice then any other which holdeth by Eſcuage ought to doe: but he which holdeth by grand

tient

tient p grand Serjeanty doit fair un especial ſzvice al Roy, que il que tient per eſcuage ne doit faire.

Serjeanty ought to do ſome ſpeciall ſervice to the King, which he that holds by Eſcuage ought not to doe.

litary; for ſome Grand Serjeanties are to be done in the time of warre, for the ſafety of the Realm, and ſome in time of peace, for the honour of the Realm.

¶ *Ou deſte ſon Marſhall.*

* If the King giveth lands to a man to hold of him to be his Marſhall of his hoſt, or to be Marſhall of England, or to be Conſtable of England, or to be high Steward of England, * Chamberlain of England, and the like, theſe are grand Serjeanties; and theſe and ſuch like grand Serjeanties are of great and high juriſdiction, and ſome of them concern matters mi-

* Fleta lib. 1. cap. 10. 11 Eliz. Dier 285. Camden Brit. 286, 287.
* Ockam cap. Officium conſtabularii.

litary in time of warre, and ſome ſervices of honour in time of peace. And this is to be obſerved, that though there were divers Lords Marſhals of England before the Reign of (z) R. 2. yet King R. 2. created Thomas Mowbrey Duke of Norfolk, and firſt Earl Marſhal of England, per nomen comitis Mareſchalli Angliæ.

(z) In rot. patent. de anno 20 R 2.

¶ *Ou de porter ſon eſpee, &c. ou deſte ſon Sewer a ſon Coronement, &c.* Theſe and ſuch like grand Serjeanties at the Kings Coronation are ſervices of honour in time of peace.

¶ *Deſte un de ſes Chamberlains, &c. ou de faire autiels ſervices.* It is alſo a Tenure by grand Serjeanty to hold (a) by any office to be done in perſon concerning the receipt of the Kings treaſure. Quia theſaurus Regis reſpicit regem & regnum: And cenſus regius eſt anima Reip. ſo it is Firmamentum belli, & Ornamentum pacis.

(a) Vide 51 H. 3. ſtatut. 5. 10 H. 3. c. 11. 14 E. 3. c. 14. 26 H. 8. c. 2. 34 & 35 H. 8. c. 16. 11 E. 4. fol. 1. Pl. Com. 207, 208.

Milites camerarii dicuntur, quia pro camerariis miniſtrant: and concerning their office, this is the effect, as Ockam (b) ſaith, Officium Camerariorum in recepta conſiſtit in tribus; ſcilicet, claves arcarum, &c. bajulant, pecuniam numeratam ponderant, & per centenas libras in forulos mittunt. But diſcontinuance in effect hath worn out their office. And yet they continue their name, and keep the keys of the Treaſury where the Records do lye.

(b) Ockam cap. quid ſit Scaccarium. Gervaſius Tilburienſis in libro nigro ſub cuſtodia camerariorum.

And another ſaith, Camerarius dicitur à camera, quia camera eſt locus in quem theſaurus recolligitur, vel conclave in quo pecunia reſervatur. So as camerarius in legal ſignification eſt cuſtos regii cenſus: and Willielmus de Bello campo comes Warwici (held) officium camerarii in Scaccario.

Rot. clauſ. 6 E. 1. memb. 1.

Or by any office concerning the adminiſtration of Juſtice; quia juſtitia firmatur ſolium.

Ex lectura Marrowe.

It appeareth by an ancient Record, (c) that Varianus de Sancto Petro tenuit de domino rege in capite medietatem ſerjeantiæ pacis per ſervitium inveniendi decem ſervientes pacis ad cuſtodiendam pacem in Ceſtria.

(c) Ex inquiſitione poſt mortem Variani de Sancto Petro. 4 E. 2. Ceſtr.

Sæ Ockam of the inſtitution and ancient order of the Exchequer. Dier 4 Eliz. 213. the Uſhery of the Exchequer holden by grand Serjeanty.

vid. 7. Aſſ. 12. 7 E. 3. 57.

¶ *Tiels ſervices, &c.* Here by (&c.) is to be underſtood other like ſervices not expreſſed, as partly appeareth by that which hath been ſaid; viz. to be Steward of England, Conſtable of England, Chamberlain of England, and other honourable ſervices, whereof more ſhall be ſaid in this Chapter.

¶ *Ou un ſpeciall ſervice al Roy.* That is to ſay, that this great ſervice be ſpecially ſet down; for it may conſiſt of divers branches, as to goe with the King in his Warre in the forward, and to return in the rearward; and alſo to pay rent, &c. But yet it muſt be certain and particular.

23 H. 3. gard. 148.

Sect. 154.

¶ ITem ſi tenant que tient per Eſcuage mourſt, ſon heire eſteant de pleine age, ſil tenoit per un ſæ de Chivaler, le heire ne paiera forſqz C. ſ. pur reliefe, come eſt ordeine per l'ſtatute de Magna Charta, cap. 2. Mes ſi celuy que tient de Roy per grand

ALſo if a Tenant which holds by Eſcuage dieth, his heir being of full age, if he holdeth by one Knights fee, the heir ſhall pay but a C. s. for relief, as is ordained by the Statute of *Magna Charta, c.* 2. But if he which holdeth of the King by grand Serjeanty

Serjeanty

Serjeantie moꝛuſt, ſon heire eſteant de plein age, le heire paiera al Roy pur reliefe le value de les terres ou Tenements per an (ouſter les charges & repꝛiſes) queux il tient del Roy per grand Serjeantie. Et eſt aſcavoir, que Serjeantia en Latin idem eſt quod ſervitium; & ſic Magna Serjeantia idem eſt quod magnum ſervitium.

dieth, his heir being of full age, the heir ſhall pay to the King for relief one years value of the lands or tenements which he holdeth of the King by grand Serjeanty, over & beſides all charges and repriſes. And it is to be underſtood, that *Serjeantia* in Latine is the ſame *quod ſervitium*; and ſo *Magna Serjeantia* is the ſame *quod Magnum Servitium.*

P*Aiera al Roy pur reliefe le value de ſes terres, &c.* And herewith agreeth 11 H. 4. 72. b.

11 H. 4. 72. b.

¶ *Serjeantia idem eſt quod ſervitium.* Hereby it appeareth that the explanation of ancient woꝛds and the true ſenſe of them are requiſite and to be underſtood per verba notiora.

Sect. 155.

¶ *Tenants per eſcuage doient faire lour ſervice hors del Roialme.*

F.N.B. 83. E.

Foꝛ he that holdeth by Coꝛnage oꝛ Caſtle-gard holdeth by Knights Service, and is to doe his Service within the Realm, but he holdeth not by eſcuage; & therefoꝛe Littleton materially ſaid, Tenant per eſcuage, and not Tenant by Knights ſervice.

¶ Item ceux q̄ teignont per eſcuage doient faire lour ſervice hoꝛs de roialme, mes ceux q̄ teignōt p grād Serjeantie, p̄ le greinōr part, doient faire lour ſervices deins le Roialme.

ALſo they which hold by Eſcuage ought to doe their ſervice out of the Realm, but they which hold by Grand Serjeanty (for the moſt part) ought to do their ſervices within the Realm.

¶ *Pur le greinder part.* Foꝛ to bear the Kings Banner, oꝛ his Lance, oꝛ to lead his hoſt, and to be his Marſhall, &c. may be as well without the Realm; and therefoꝛe Littleton ſaid (foꝛ the greateſt part.)

Sect. 156.

4 H. 5. cap. 7. 22 E. 4. cap. 8 Camden in Britannia.

¶ *EN l'marches de Scotland.* Marches is either a Saxon woꝛd, and ſignifieth limites, borders; oꝛ an Engliſh woꝛd, viz. marks. Nota, foꝛ that it lieth near to Scotland, it is ſaid in the Marches of Scotland, and yet the Land

¶ Item il eſt dit, q̄ en le Marches de Scotland aſcuns teignont de Roy per Coꝛnage, ceſta-ſcavoir, pur bentier un coꝛnu, pur garner homes de pais quant ils oyent que le Scottes ou auters enemies veignont ou voilent enter en Engleterre, quel ſervice eſt

ALſo it is ſaid, that in the Marches of Scotland ſome hold of the King by Cornage, that is to ſay, to winde a horn, to give men of the Country warning when they hear that the Scots or other enemies are come or will enter into England, which ſervice is grand Serjeanty.

grand

graund Serjeanty. Mes ſi aſcun tenant tient daſcun auter Seignior que de Roy per tiel ſervice de Cornage, ceo neſt pas graund Serjeanty, mes eſt ſervice de Chivaler, & trait a luy garde & marriage: car nul poit tener per graund Serjeanty ſi non de Roy tantſolement.

But if any tenant hold of any other Lord then of the King by ſuch ſervice of Cornage, this is not grand Serjeanty, but it is Knights Service, and it draweth to it Ward and Marriage: for none may hold by grand Serjeanty but of the King only.

vice, of the King it is grand Serjeanty; ſo as the Royal dignity of the King doth the difference of the Tenure in this caſe. And I find that there were Cornicularii amongſt the Romans; & dicti fuerunt cornicularii, quia cornu faciebant excubias militares: and Magna Serjeantia is appropriated only to this Tenure.

whereof Littleton here ſpeaketh lieth in England.

¶ *Per Cornage.* Cornagium is derived (as cornuare alſo is) à cornu, and is as much (as before hath been noted) as the ſervice of the Horn. It is alſo called in old Books Horngeld.

Note, a Tenure by Cornage of a common perſon is Knights ſervice. 23 H. tit. gard. 148. 3 E. 3. 66. in fine. 16 E. 3. avowry 90. F.N.B. 83.

Sect. 157.

¶ ITem home poit deier Anno 11 H. 4. que Cokayne, adonque chiefe Baron deſchequer, vient en le common bank, portant obeſques luy la Copy dun record in hæc verba; Talis tenet tantam terram de Domino rege per Serjeantiam, ad inveniendum unum hominem ad guerram ubicunque infra quatuor Maria, &c. Et il demaunda ſil fuit graund Serjeantie ou petit Serjeantie. Et Hanke adonques diſoit, que il fuit graunde Serjeantie, pur ceo que il ad ſervice a faire p corps dun home, & ſil ne purra trover nul home a faire l'ſervice pur luy, il meſme doit faire. Quod alii

ALſo a man may ſee in *Anno* 11 *H.* 4. that *Cokayne*, then Chief Baron of the Exchequer, came into the Common Place, and brought with him the Copy of a Record in theſe words; *Talis tenet tantam terram de Domino Rege per Serjeantiam, ad inveniendum unum hominem ad guerram ubicunque infra quatuor Maria, &c.* And he demanded if this were Grand Serjeanty or petit Serjeanty. And *Hank* then ſaid, that it was grand Serjeanty, becauſe he had a ſervice to do by the body of a man, and if he cannot find a man to do the ſervice for him, he himſelf ought to do it. *Quod alii Juſtitiarii conceſſe-*

¶ *Et ſil ne purra trover nul home a faire le ſervice pur luy, &c.* Hereby it appears, That Tenant by Grand Serjeanty may in ſome Caſes make a Deputy: and therefore the diverſity is, that where the Grand Serjeanty is to be done to the Royal Perſon of the King, or to execute one of thoſe high and great Offices, there his Tenant cannot make a Deputy without the Kings licence; and therefore Littleton hath ſaid before, that ſuch ſervices are to be done in proper perſon. But he that holdeth to ſerve him in his War within the Realm, or by Cornage, may make a Deputy.

11 H. 4. 72. 24 E. 3. 32. Vide Hill. 8 E. 1. Middl. inter Placita de Banco, Sir John Moyſe Caſe.

11 H. 4. 72.

(*t*) Johannes de Archier, qui tenet de Domino Rege in capite per Serjeantiam archeriæ, &c. in Comitatu Glouc. hæres in cuſtodia.

* Clauſ. 18 H. 3. M. 5.

¶ *Infra quatuor Maria.* That is, within the Kingdom of England and the Dominions of the ſame Kingdom.

Rot. Eſcaetor. 41 H. 3. nu. 23. Stephen Haringdons Caſe.

Now it is good to be ſeen what perſons that hold by Grand Serjeanty may do and perform that honourable Service in perſon, and who ought not to be received thereunto,

unto, but ought to make a ſufficient Deputy. At the Coronation of (a) King R. 2. John Wiltſhire Citizen of London exhibited his Petition to the high Steward of England in his Court, that where the ſaid John held certain Lands in Hayden in the County of Eſſex of the King by Grand Serjeanty, viz. to hold a towell when the King ſhould waſh his hands before dinner the day of his Coronation, &c. and prayed that he might be accepted to do this office of Grand Serjeanty, the judgment followeth: Et quia apparet per record. de Scaccario Domini Regis in Curia monſtrat' quod prædicta tenementa tenentur de Domino Rege per ſervitium prædictum, Ideo dictus Johannes admittitur ad ſervitium ſuum hujuſmodi faciendum per Edmundum Comitem Cantabrigiæ deputatum ſuum: & ſic idem Comes in jure ipſius Johannis Manutergium tenuit quando Dominus Rex lavabat manus ſuas dicto die Coronationis ſuæ ante prandium.

(a) 1 R. 2. Rot. claus. m. 45.

By which Record it appeareth that the ſaid John Wiltſhire being of this quality, and having not any dignity, could not do and perform this high and honourable ſervice to the Royal perſon of the King, but did make an honourable Deputy, who performed it in his Right; which is worthy of obſervation.

Vide 1 R. 2. memb. 45.

At the ſame Coronation William Furnevall exhibited his Petition in the ſame Court, that where he held the Manor of Farnham in the County of Buck. with the Hamlet of Cete in the ſame County, by the ſervice to find to the King at his Coronation a Glove for his right hand, and to ſupport the Kings right hand the ſame day, while he held in his hand the verge Royal, the judgment followeth: Qua quidem petitione debitè intellecta, & facta publica proclamatione ſi quis clameo ipſius Willielmi in ea parte contradicere vellet, nemineque ei contrariante, conſideratum fuit, quod idem Willielmus, aſſumpto per eum primitus ordine militari, ad ſervitium prædictum admitteretur faciendum: & poſtmodo, (videlicet) die Martis proximo ante Coronationem prædictam, Dominus Rex ipſum Willielmum apud Kenington honorificè præfecit in militem; & ſic idem Willielmus ſervitium ſuum prædictum dicto die Coronationis juxta conſiderationem prædictam perfecit & in omnibus adimplevit. By which it appeareth that a Knight is of that dignity, that he may perform this high and honourable ſervice in his own perſon; and although this William Furnevall was deſcended of an honourable family, yet before he was created Knight he could not perform it.

And Sir John de Argentine Chivaliер performed the ſervice of Grand Serjeanty, to be the Kings Cup-bearer at the ſame Coronation.

(m) Vide 1 R. 2. m. 45.

(m) Anne, which was the wife of Sir John Haſtings Earl of Pembrock, who held the Manor of Aſhley in Norfolk of the King by Grand Serjeanty, viz. to perform the office of the Pery at his Coronation, was adjudged to make a Deputy, becauſe a woman cannot doit in perſon, and thereupon ſhe deputed Sir Thomas Blount Knight, who performed the ſame in her Right. John, ſon and heir of John Haſtings Earl of Pembrook, exhibited in the ſame Court his Petition, ſhewing that by his tenure he was to carry the great Spurs of Gold before the King at his Coronation, &c. The judgment is, Audita & intellecta billa prædicta, pro eo quod dictus Johannes eſt infra ætatem, & in cuſtodia Domini Regis, quanquam ſufficienter oſtenditur per record & evidentias, quod ipſe ſervitium prædictum facere deberet; Conſideratum exſtitit, quod eſſet ad voluntatem Regis, quis dictum ſervitium iſta vice in jure ipſius Johannis faceret: & ſuper hoc Dominus Rex aſſignavit Edmundum Comitem Marchiæ ad deferendum dicto die Coronationis prædicta calcaria in jure præfat' hæredis, ſalvo jure alterius cujuſcunque. Et ſic idem Comes Marchiæ Calcaria illa prædicto die Coronationis coram ipſo Domino Rege deferebat.

Vide 1 R. 2. m. 45.

By which it appeareth, that the heir before he hath accompliſhed his age of one and twenty years cannot perform this great and honourable ſervice, but, during his minority, the King ſhall appoint one to perform the ſervice.

Sect. 158.

46 E. 3. 15. a. per Finchden.

¶ Here Littleton ſaith, that he that holds by Grand Serjeanty doth hold by Knights Juſticiarii conceſſerunt. (Cokain), Donque doit le tenant en ceo cas paier reliefe al value del terre per an? Ad quod non fuit reſponſum.

¶ Et nota que touts que teignont de Roy p grand ſervice

runt. Then, ſaith *Cokaine*, ought the Tenant to pay Relief to the value of the Land by the year? *Ad quod non fuit reſponſum.*

And note that all which hold of the King by Grand Ser-

Serjeanty teignont de Roy per ſervice de Chivalrie, & le Roy prend avera garde, mariage, & reliefe; mes le Roy navera de eux Eſcuage, fils ne teignont de luy per Eſcuage.

Serjeanty hold of the King by Knights Service, and the King for this ſhall have Ward, Marriage, and Relieſe; but he ſhall not have of them Eſcuage, unleſſe they hold of him by Eſcuage.

Service which is ſo ſaid of the effects. And therefore Littleton doth adde, that the King ſhall have Ward, Marriage, & Relief, which are the effects of Knights Service, &c.

Sometimes, in ancient Records, Servitium Militare is called ſervitium Haubertieum, or ſervitium Brigandinum, or ſervitium Loricatum. And a Haubert or Brigandin ſignifieth a coat of mail.

Chap. 9. *Petit Serjeanty.* *Sect.* 159.

¶ Tenure per petit Serjeanty eſt, lou home tient ſa tre de noſtre Sſeir l' Roy, p render al Roy annualm un arke, ou un eſpée, ou un dagger, ou un cuttel, ou un launce, ou un paire de Gants de ferre, ou un paire de Spours doze, ou un ſete, ou divers ſetes, ou de render auters tiels petit choſes touchants le guerre.

TEnure by petit Serjeanty is, where a man holds his Land of our Sovereign Lord the KING, to yield to him yearly a Bow, or a Sword, or a Dagger, or a Knife, or a Lance, or a pair of Gloves of Maile, or a pair of gilt Spurs, or an Arrow, or divers Arrows, or to yield ſuch other ſmall things belonging to War.

De noſtre Seignior le Roy. And ſo Littleton concludeth this Chapter, that a man cannot hold by grand Serjeanty, or petit Serjeanty, but of the King, and of the King as of his perſon, and not of any Honour or Manor. And it is to be obſerved, that regularly a tenure of the King as of his perſon is a Tenure in Capite, ſo called κατ' ἐξοχὴν, propter excellentiam, becauſe the head is the principal part of the body: and he that holdeth of any common perſon as of his perſon, he in truth holdeth in Capite: but again, κατ' ἐξοχὴν, it is only in common underſtanding applied to the King, and that Seigniory of a common perſon is called a Tenure in groſſe, that is by it ſelf, and not linked or tied to any Manor, &c. Britton fol. 164. Bracton lib. 2. fol. 35. Fleta lib. 2. cap. 9. Ockam cap. quid de tribus oblatis.

And this Tenure of the King in Capite is ſaid (a) to be a Tenure of the King as of his Crown, that is, as he is King. (b) And therefore if one holdeth land of a common perſon in groſs as of his perſon, and not of any Manor, &c. and this Seigniory eſcheateth to the King, (yea though it be by attainder of Treaſon) he holdeth of the perſon of the King, and not in Capite, becauſe the original Tenure was not created by the King. And therefore it is directly ſaid, that a Tenure of the King in Capite is, when the land is not holden of the King as of any Honour, Caſtle, or Manor, &c. but when the Land is holden of the King as of his Crown.

(a) Bracton lib. 2. fol. 87.
(b) 3 E. 3. tenures B. 94. 30 H. 8. 42. 28 H. 8. Livery B. 37. 29 H. 8. ibid. 58. 6 H. 8. Dier 58. Vide Leſtatute de 1 E. 8. cap. 4. F. N. B. 3. K.

Note that an Honour is the moſt noble Seigniory of all others, and originally created by the King, but may afterward be granted to others. Vide for the creation of an Honor, 31 H. 8. cap. 5. 33 H. 8. cap. 37, 38. 37 H. 8. cap. 18.

And it is to be obſerved that a man may hold of the King in Capite, or of his Crown, as well in Socage as by Knights Service.

¶ *De render al Roy annualment un arke, ou un eſpee, &c.* As grand Serjeanty muſt be done by the body of a man, ſo petit Serjeanty hath nothing to do with the body of a man, but to render ſome things touching war, as a Bow, a Sword, a Dagger, a Knife, a Lance, a pair of Gantlets of iron, or Shafts, and ſuch like. Magna Charta cap. 27.

It is to be obſerved, that grand Serjeanty or Knights Service is not in Law called Liberum Servitium, as Socage is, but per feodum unius militis, &c. but to find the King ſo many ſhips Regiſt. fol. 2. F. N. B. fol. 1.

for

for his paſſage is called liberum ſervitium, and therefore it is ſaid, Per liberum ſervitium, ad inveniendum nobis quinque naves ad tranſitum noſtrum ad mandatum noſtrum. And therefore clearly ſuch a Tenure is neither Grand Serjeanty, nor Knights Service, becauſe nothing is to be done by the body of any man, nor in that caſe touching warre, but Ships to be found. And this is the reaſon that Littleton yieldeth of the examples he doth here put, becauſe that ſuch a Tenant by his Tenure ought not to go, nor to do any thing in his perſon touching warre.

Bract. li. 2. fol. 35. And herewith agreeth Bracton, Ex parvis Serjeantiis quæ non reſpiciunt Regem, nec Patriæ detenſionem, nullum competere debet maritagium nec cuſtodia, &c.

9 H. 3. Gard. 145. If a man holdeth land of the King, to find an horſe of ſuch a price, and a ſaddle and a bridle, by forty dayes, or any other time, when the King goeth with his army againſt Walis, this is Petit Serjeanty, and no Grand Serjeanty, for the cauſe aforeſaid.

Sect. 160.

¶ *Tiel ſervice neſt forſque Socage, &c.*

But, as it hath been ſaid, the dignity of the perſon of the King giveth the name of Petit Serjeanty, which in caſe of a common perſon ſhould be called plain ſocage, ab effectu; for it ſhall have ſuch effects or incidents as belong to Socage, and neither ward nor marriage, &c. for they belong to Knights ſervice.

9 H. 3. Gard. 145.

Of this tenure the great Charter in the perſon of the King ſaith thus, Nos non habebimus cuſtodiam hæredis, &c. occaſione alicujus parvæ Serjeantiæ quam tenet de nobis per ſervitium, reddendo nobis cultellos, ſagittas, &c.

Mag. Chart. cap. 28. Vide Stat. de Wardis & Reliefs, 28 E. 1.

¶ Et tiel ſerbice ne ſoeſqe Socage en effect, pur ceo que tiel Tenant per ſon Tenure ne doit aler ne faire aſcun choſe en ſon proper perſon touchant le guerre, mes de render & payer annualmet certain choſes al Roy, ſicome home doit payer un Rent.

AND ſuch ſervice is but Socage in effect, becauſe that ſuch Tenant by his Tenure ought not to goe nor doe any thing in his proper perſon touching the warre, but to render and pay yearly certain things to the King, as a man ought to pay a Rent.

Sect. 161.

¶ Of this ſufficient hath been ſaid before, ſaving that parva Serjeantia is only appropriate to this Tenure.

Vide ſect. 1.

¶ Et nota, q̄ home ne poit tener p̄ grand Serjeanty, ne per petit Serjeanty, ſi non de Roy, &c.

AND note, that a man cannot hold by grand Serjeanty, nor by petit Serjeanty, but of the King, &c.

CHAP. 10. *Tenure en Burgage.* *Sect.* 162.

Burgage, in Latine Burgagium, is derived of this word Burgus, which is Vicus, Pagus, or Villa, a Town; and it is called a Burgh, becauſe it ſendeth Burgeſſes to Parliament.

Bracton lib. 3. Tract. 2. Britton fol. 164. Mirror cap. 2. ſect. 18. Lib. 10. fol. 123, 124. The Mayor of Lynns caſe. 40 Aſſ. p. 27. 43 E. 3. 32. 21 E. 4. 53, & 54. 21 H. 7. 15. 2 E. 3. cap. 3.

¶ Tenure en Burgage eſt, lou auntient Burgh eſt, de que l' Roy eſt Seignior, &

¶ TEnure in Burgage is, where an ancient Burrough is, of the which the King is Lord,

Of Burghs, ſome be incorporate, and ſome not; and ſome be walled, and ſome not. (b) It

(b) Bracton lib. 3. fol. 124. Fleta lib. 1. cap. 47.

ceur

ceux que ont Tenements deins le Burgh teignont del Roy lour Tenements, que chescun Tenant pur son Tenement doit payer al Roy un certein Rent per an, &c. Et tiel Tenure nest forsque Tenure en Socage.

and they that have Tenements within the Borrough hold of the King their Tenements, that every Tenant for his Tenement ought to pay to the King a certain rent by year, &c. And such Tenure is but Tenure in Socage.

was in former times taken for those Companies of ten families which were one anothers pledge; & therefore a pledge is in the Saxon tongue a Borhoe, whereof some take it that a Burgh came; whereof also cometh Headborough, or Borowhead, Capitalis Plegius, a Chief Pledge, viz. the Chief man of the Borhoe, whom Bracton calleth Frithburgus: and hereof also cometh Burghbote, which, as Fleta saith, signifieth Quietanciam reparationis murorum Civitatis aut Burgi.

Every City is a Burgh, but every Burgh is not a City; whereof more shall be said hereafter. And the termination of this word Burgagium (as before hath been noted) signifieth the service whereby the Burgh is holden. And of this word (Burgh) two ancient and noble Families take their names, viz. de Burgo, and de Burgo claro, Burchier.

¶ *De que le Roy est Seignior.* But it may be holden of another, as by that which immediately followeth appeareth. F.N.B. 64. d.

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¶ ET meisme le maner est, lou un auter Seigniour Espirituall ou Temporal est Seignior de tiel Burgh, & les Tenants de Tenements en tiel Burgh teignont de lour Seignior, a payer chescun de eux un annual Rent.

AND the same manner is, where another Lord Spiritual or Temporal is Lord of such a Burrough, and the tenants of the Tenements in such a Burrough hold of their Lord, to pay each of them yearly an annual Rent.

¶ This is evident, and needeth no explanation: onely this by the way is to be observed, that Bishops, being Lords of Parliament, have not been called Lords Spiritual so lately as some have imagined. 16 R.2. cap.5. 1 H.4. cap.2. &c.

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¶ ET est appel tenure en burgage, pur ceo que les Tenements deins l'Burgh sont tenus del Seignior del Burgh p certeine rent, &c. Et est accordoire que les ancient villes appel

AND it is called Tenure in Burgage, for that the Tenements within the Burrough be holden of the Lord of the Burrough by certain rent, &c. And it is to wit that the ancient Towns called Burroughs be

¶ PER *certeine rent, &c.* By (&c.) here is implied Fealty, or other service, as to repair the house of the Lord, &c.

¶ *Les ancient villes appel Burghs.* So as a Burgh is an ancient Town holden of the King or any other Lord which sendeth Burgesses to the Parliament.

And it is to be observed, that Burgh and Bury have all one signification. As Canterbury, Bury Saint Edmond, Sudbury, Salisbury, Banbury, Heytesbury, Malmesbury, Shaftesbury, Tenkesbury,

Teukesbury, and others, ſend Burgeſſes to the Parliament. Vide pro Villis, Parochiis & Hamlettis poſtea, Sect. 171.

¶ *Cities.* Civitas: Whereof cometh the word City. A City is a Borough incorporate, which hath or hath had a Biſhop: And though the Biſhoprick be diſſolved, yet the City remaineth.

Lamb. fol. 125.

In the time of William the Conquerour it is declared in theſe words, Item nullum mercatum vel forum ſit, nec fieri permittatur, niſi in Civitatibus regni noſtri, & in Burgis clauſis & muro vallatis, & caſtellis, & locis tutiſſimis', ubi conſuetudines regni noſtri, & jus noſtrum commune, & dignitates coronæ noſtræ, quæ conſtitutæ ſunt à bonis prædeceſſoribus noſtris, deperire non poſſunt, nec defraudari, nec violari, ſed omnia rite & per judicium & juſtitiam fieri debent: & ideo caſtella & burgi & civitates ſunt & fundatæ & ædificatæ, ſcilicet ad tuitionem gentium & populorum regni, & ad defenſionem regni, & idcirco obſervari debent cum omni libertate, & integritate, & ratione. So as by this it appeareth that Cities were inſtituted for three purpoſes. Firſt, Ad conſuetudines regni noſtri, & jus noſtrum commune, & dignitates coronæ noſtræ conſervand'. 2. Ad tuitionem gentium & populorum regni. And thirdly, Ad defenſionem regni. For conſervation of Laws, whereby every man enjoyeth his own in peace: for tuition and defence of the Kings Subjects; and for keeping the Kings peace in time of ſudden uproars: and laſtly, for defence of the Realm againſt outward or inward hoſtility.

Burghs ſont les pluis ancient villes q̄ ſont deins Engleterre; car ceux villes que ore ſont cities ou counties, en ancient temps fueront Burghs, & appelles Burghs, car de tielx ancient villes appelles Burghs veignont les Burgeſſes al Parliament, quant le Roy ad ſummon ſon Parliament.

the moſt ancient towns that be within England; for the Towns that now be Cities or Counties, in old time were Boroughs, and called Boroughs, for of ſuch old Towns called Boroughs come the Burgeſſes of the Parliament to the Parliament, when the King hath ſummoned his Parliament.

Civitas & Urbs in hoc differunt, quod incolæ dicuntur civitas, urbs vero complectitur ædificia: but with us the one is commonly taken for the other. Villeins ſont coultivers de fiefe demurrants in villages upland; car de ville eſt dit villeine, & de Borough Burgeſſes, & de citie citizens.

Mirror cap. 2. Sect. 18. Britton fol. 87.

Every Borough incorporate that had a Biſhop within time of memory is a City, albeit the Biſhoprick be diſſolved; as Weſtminſter had of late a Biſhop, and therefore it yet remains a City. The Burgh of Cambridge, an ancient City, as it appeareth by a judiciall Record (which is to be preferred before all others) where Mos civitatis Cantabrigiæ is found by the oath of 12. men, the recognitors of that aſſize: which (omitting many others) I thought good to mention, in remembrance of my love and duty Almæ Matri Academiæ Cantabrigiæ.

Mich. 7 R. 1. Rot. 1. (which was in Anno Dom. 1195.) in an Aſſ. of Darrein preſentment for the Church of St. Peters in Cambridge.

There be within England two Archbiſhopricks, and 23. other Biſhopricks; therefore ſo many Cities there be: and Cambridge and Weſtminſter being added, there are in all 27. Cities within this Realm, and may be more then at this time I can call to memory.

It is not neceſſary that a City be a County of it ſelf, as Cambridge, Ely, Weſtminſter, &c. are Cities, but are no Counties of themſelves, but are part of the Counties where they be.

¶ *Counties.* Or Shires; the one taken from the French, the other from the Saxon: in Latine Comitatus. Counties are certain circuits or parts of the Kingdom into the which the whole Realm was divided for the better government thereof, ſo as there is no land but it is within ſome County. And every of them is governed by a yearly Officer which we call a Shireve. Which name is compounded of theſe two Saxon words, Shire and Reve, (i.) Præpoſitus, or Præfectus Comitatus. But hereof more hereafter in his proper place ſhall be ſpoken. There be in England 41 Counties, and in Wales twelve.

¶ *Veignont les Burgeſſes al Parliament, &c.* Parliament is the higheſt and moſt honourable and abſolute Court of Juſtice of England, conſiſting of the King, the Lords of Parliament, and the Commons. And again, the Lords are here divided into two ſorts, viz. Spirituall and Temporall. And Commons are divided into three parts, viz. into Knights of Shires or Counties, Citizens out of Cities, and Burgeſſes out of Boroughs. The words of the Writ to the Sheriff for the election being, Duos milites gladiis cinctos, magis idoneos & diſcretos comitatus tui, & de qualibet civitate comitatus tui duos cives, & de

Lib. 10. fol. 123, 124. Vide devant Sect. 97.

quolibet

quolibet Burgo duos Burgenſes de diſcretioribus & magis ſufficientibus, &c. All which have voices and ſuffrages in Parliament. You ſhall read in the Parliament Rolls, that (as hath been ſaid) there is Lex & conſuetudo Parliamenti, quæ quidem lex quærenda eſt ab omnibus, ignorata à multis, & cognita à paucis. Of the members of this Court ſome be by deſcent, as ancient Noblemen; ſome by creation, as Nobles newly created; ſome by ſucceſſion, as Biſhops; ſome by election, as Knights, Citizens, and Burgeſſes. Vide Sect.3.

It is called Parliament, becauſe every member of that Court ſhould ſincerely and diſcreetly parler la ment for the general good of the Common-wealth. Which name it hath alſo in Scotland. And this name before the Conqueſt was uſed in (a) the time of Edward the Confeſſor, William the Conqueror, &c. It was anciently before the Conqueſt called Michel Sinoth, Michel gemote, ealſa Witenage mote, that is to ſay, the great Court or Meeting of the King and of all the wiſe men; ſometime of the King with the Councell of his Biſhops, Nobles, and wiſeſt of his people. This Court the Frenchman calleth Les Eſtates, or Aſſemblie des Eſtates. In Germany it is called a Diet. For thoſe other Courts in France that are called Parliaments, they are but ordinary Courts of Juſtice, and (as Paulus Jovius affirmeth) were firſt eſtabliſhed by us. 4 H.8. cap 8. (a) Treatiſe de modo tenend. Parliam. 21 E.3. fol. 60. 2. Johannes de Rupicella tempore regis Johannis. Pol. Virgil lib.3. tempore H.8. W.1. 3 R.1. in the title.

The King of England is armed with divers Councels, one whereof is called Commune Concilium, and that is the Court of Parliament; and ſo it is legally called in Writs and judicial proceedings Commune Concilium Regni Angliæ. And another is called (b) Magnum Concilium: this is ſometime applied to the upper houſe of Parliament, and ſometime out of Parliament time to the Peers of the Realm, Lords of Parliament, who are called Magnum Concilium Regis. For the proof whereof take one (c) Record for many in the fifth year of King H.4. at what time there was an exchange made between the King and the Earl of Northumberland, whereby the King promiſeth to deliver to the Earl lands to the value, &c. Per advice & aſſent des eſtates de ſon Realme & de ſon Parliament, (parenſi que Parliament ſoit devant le feaſt de St. Lucy) ou autrement per advice de ſon graund Councel, & autres Eſtates de ſon Realme, que le Roy ſerra aſſembler devant le dit feaſt, in caſe que le Parliament ne ſoit. And herewith agreeth the Act of Parliament in 37 E.3. cap.18. where it is ſaid, before the Chancellour, Treaſurer, and great Councel. Thirdly, (as every man knoweth) the King hath a Priby Councel for matters of State, (as for example) (d) Henricus de Bello monte Baro, de magno & de privato Concilio Regis juratus: and many others before and after. The fourth Councel of the King are his Judges of the Law for Law matters, and this appeareth frequently in our (e) Books, and muſt be intended: when it is ſpoken generally by the Councel, it is to be underſtood Secundum ſubjectam materiam; for example, if it be legall, then by the Kings Councell of the Law, viz. his Judges. (b) Bracton lib.1. cap.2. Regiſt. 280. (c) 27 Aug. 5 H.4. (d) In Dorſ. Clauſ. 16 E.2. M.5. (e) 43 Aſſ.15. 27 H.6.5. 1 R.3. 11. Regiſt. 191.122, 123. 4 E.3.2. 39 E.3.35. 3 Aſſ.15. 19 Eq. judgment 174.

Now for the antiquity of this high Court of Parliament, whereof Littleton here ſpeaketh; It appeareth that divers Parliaments have been holden long before and until the time of the Conqueror, which be in Print, and many more appearing in ancient Records and Manuſcripts. (f) Le Roy Alfred aſſembler' les Counties, &c. & ordeina per uſage perpetual, que deux foitz per an ou pluis ſovent pur miſter in temps de peace ſe aſſemblerent a Londres a Parliamenter, ſur le guidement del people de Dieu, & coment ſoy garderont de pecher, viveront en quiet, & receiveront droit per uſages & ſanits judgements per ceſte eſtate, ſe fieront pluſors ordinances per pluſors Roys jeſque a temps le Roy que ore eſt, que fuit le Roy E.1. The concluſion of that great Parliament holden by King Athelſtan at Grately is very remarkable, which I have ſeen in theſe words: All this was enacted in that great Synod or Councell at Grately, whereat was the Archbiſhop Wolfehelme, with all the Noblemen and wiſe men which King Athelſtan called together. W.1.cap.1. Leſtat. de Templ. 16 R.2. ſtat. de Præmunire. See the ſame publiſhed by Mr. Lambert. (f) Mirror cap.1. Sect.2. Vide ſtatutes de 4 E.3. cap.14. & 36 E.3. cap.10.

There have been in the time of and ſince the Conqueſt, in the reigns of H.1. King Stephen, H.2. R.1. King John, H.3. &c. 280 Seſſions of Parliament, and at every Seſſion divers Acts of Parliament made, no ſmall number whereof are not in Print. Mirr. ca.2. Sect.4,7,10,14. cap. 4. de defaults, & cap. de Homicide cap.1. Sect.13. cap.4. de Peyns.

The juriſdiction of this Court is ſo tranſcendent, that it maketh, inlargeth, diminiſheth, abrogateth, repealeth, and reviveth Laws, Statutes, Acts and Ordinances, concerning matters Eccleſiaſticall, Capital, Criminal, Common, Civill, Martiall, Maritime, and the reſt. None can begin, continue, or diſſolve the Parliament but by the Kings authority. Of which Court it is ſaid, (a) Que il eſt de treſgrand honor & juſtice, de que nul doit imaginer choſe diſhonorable. (b) Habet Rex Curiam ſuam in Concilio ſuo in Parliamentis ſuis, præſentibus Prælatis, Comitibus, Baronibus, Proceribus, & aliis viris peritis, ubi terminatæ ſunt dubitationes judiciorum, & novis injuriis emerſis nova conſtituuntur remedia, & unicuique juſtitia prout meruerit retribuetur ibidem. But this properly doth belong to the Juriſdiction of Courts, and therefore this little taſte hereof ſhall ſuffice. Ockam quid cum Ven. Matth. Pariſ. 212,213. (a) Pl. Com.398. b. Doct. and Stud. cap.55. fol.164. (b) Fleta lib.2. cap.2. Forteſcue de laudibus legum Angliæ. Bracton lib.1. cap.8.

Sect. 165.

¶ *Cvſtomes & uſages.* Conſuetudo is one of the main triangles of the Laws of England, thoſe Laws being divided into Common Law, Statute Law, and Cuſtome. Of which it is ſaid, (*) Bract. lib. 1. cap. 3. fol. 2. * that Conſuetudo quandoque pro lege ſervatur, in partibus ubi fuerit more utentium approbata, & vicem Legis obtinet; longævi enim temporis uſus & conſuetudinis non eſt vilis authoritas. (c) Idem lib. 2. fol. 52. (c) Longa poſſeſſio (ſicut jus) parit jus poſſidendi, & tollit actionem vero domino.

Of every Cuſtome there be two eſſential parts, Time and Uſage; Time out of mind, (as ſhall be ſaid hereafter) and continuall and peaceable uſage without lawfull interruption.

¶ Item p̄ le greinder part tielx burghes ont divers cuſtomes & uſages que nont pas auters villes. Car alcuns burghes ont tiel cuſtome, q̄ ſi home ad iſſue pluſoꝛs fits, & moꝛuſt, le puiſne fits enheriteꝫ touts les tenements que fuer̄ a ſon pere deins m̄ le burgh, come heire a ſon pere, per foꝛce de cuſtome. Et tiel cuſtome eſt appel Burgh Engliſh.

Alſo for the greater part ſuch Boroughs have divers cuſtomes and uſages which be not had in other Towns. For ſome Boroughs have ſuch a cuſtome, that if a man have iſſue many ſons, and dieth, the youngeſt ſon ſhall inherit all the Tenements which were his fathers within the ſame Borough, as heir unto his father, by force of the cuſtom: the which is called Borough Engliſh.

¶ *Que nont pas auters villes.* It is neceſſary to be known what cuſtomes may be alledged in an upland town which is neither City nor Boroughs. (*) 44 E. 3. 33. 40 Aſſ. 4. 27. 41. 21 E. 4. 54. 43 E. 3. 32. * In an upland town that is neither City nor Borough ſuch a cuſtome to deviſe lands cannot be alledged; neither in an upland town can there be a cuſtome of Borough Engliſh or Gabelkind: but theſe are cuſtomes which may be in Cities or Boroughs. (d) 21 E. 4. 53, 54. Alſo if lands be within a Manor, Fee, or Seigniory, the ſame by the cuſtome of the Manor, Fee, or Seigniory, may be deviſable, or of the nature of Gabelkind, or Borough Engliſh. (*) 21 E. 4. 54. 15 E. 4. 29. 11 H. 7. 14. 44 E. 3. 18. 21 H. 7. 40. * But an upland town may alledge a cuſtome to have a way to their Church, or to make By-laws for the reparations of the Church, the well-ordering of the Commons, and ſuch like things. And it is to be obſerved, that in ſpecial caſes a cuſtome may be (e) alledged within a Hamlet, a Town, a Burgh, a City, a Manor, an Honour, an Hundred, and a County: but a cuſtome cannot be alledged generally within the Kingdom of England, for that is the Common Law. (e) Bracton lib. 4. 271. 34 E. 1. detinue 60. 17 E. 2. detinue 58. 3 E. 3. det. 156. 30 E. 3. 25. 39 E. 3. 6. 9, 10. 31 E. 3. render 6. 17 E. 3. 27. 21 E. 4. 28. 22 E. 4. 8. 7 E. 3. 51. 30 E. 3. 23. 34 H. 8. Dier 54. F. N. B. 122. 5 E. 3. treſp. 13.

¶ *Le puiſne fits enheritera.* And yet by ſome cuſtomes the youngeſt brother ſhall inherit; for Conſuetudo loci eſt obſervanda.

¶ *Touts les terres ou tenements.* Either in Fee-ſimple, Fee-taile, or any other inheritance. If lands of the nature of Borough Engliſh be letten to a man and his heirs during the life of J. S. and the Leſſee dieth, the youngeſt ſon ſhall enjoy it.

Vide Glanvil lib. 7. cap. 3. 9. ¶ *Borough Engliſh.* So called, becauſe this cuſtome was firſt (as ſome hold) in England.

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Bract. lib. 4. tract. 6. cap. 13. F. N. B. 150. c. Pl. Com. 413. ¶ AND this is called Franke banke, Francus bancus. Conſuetudo eſt in partibus illis, quod uxores maritorum defunctorum habeant francum bancum ſuum de terris Sockmannorum tenent' nomine dotis.

¶ Item en alcun burghes per le cuſtome ſeme avera pur ſa dower touts les tenements q̄ fuer̄ a ſa baron, &c.

Alſo in ſome Boroughs by cuſtom the wife ſhall have for her dower all the Tenements which were her husbands.

¶ *Lve*

¶ *Que fueront a ſa baron, &c.* Here is implied by (&c.) that in ſome places the wife ſhall have the moiety of the lands of her husband ſo long as ſhe lives unmarried, as in Gavelkind. And of lands in Gavelkind a man ſhall be Tenant by the Curteſy without having of any iſſue. In ſome places the widow ſhall have the whole, or half, dum ſola & caſta vixerit, and the like. F.N.B. 150. 1 *E.*3. aide 129.

Sect. 167.

¶ ITem en aſcuns burghes per le cuſtome hõe poit deviſer per ſon teſtament les terres & tenements que il ad en fee ſimple deins meſme le burgh al temps de ſa mozant; & per force de tiel deviſe, celuy a que tiel deviſe eſt fait, apres le mozt le deviſor, poit enter en les tenements iſſint a luy deviſes, a aver & tener a luy ſolonque la forme & effect del deviſe, ſans aſcun liverie de ſeiſin deſtre fait a luy, &c.

ALſo in ſome Boroughs by the cuſtome a man may deviſe by his Teſtament his Lands and Tenements which he hath in Fee ſimple within the ſame Borough at the time of his death; and by force of ſuch Deviſe, he to whom ſuch Deviſe is made, after the death of the Deviſor, may enter into the Tenements ſo to him deviſed, to have and to hold to him after the form and effect of the deviſe, without any livery of Seiſin thereof to be made to him, &c.

¶ *Deviſer.* This is a French word, and ſignifieth ſermocinari, to ſpeak, for teſtamentum eſt teſtatio mentis, & index animi ſermo. So as a deviſer per ſon teſtament is, to ſpeak by his Teſtament what his mind is to have done after his deceaſe.

¶ *Per ſon teſtament.* Teſtamentum eſt (m) duplex, 1. In ſcriptis, 2. Nuncupativum, ſeu ſine ſcriptis. And in ſome Cities and Borroughs lands may (n) paſs as Chattels by Will nuncupative or parol without writing. Revera (o) terminatum eſt quod poteſt legari ut catallum tam hæreditas quam perquiſitum per Barones London & Burgenſes Oxon. Ideo verum eſt quod in Burgis non jacet aſſiſa mortis anteceſſoris. But in Law moſt commonly, Ultima voluntas in ſcriptis is uſed where Lands or Tenements are deviſed, and Teſtamentum when it concerneth Chattels.

(m) Vide Sect. 586.

(n) Britton fol. 164. 212. b.

(o) Bracton l. 4. fol. 272. Fleta lib. 5. cap. 5. & lib. 2. cap. 50.

¶ *Ses terres ou tenements.* And by the ſame cuſtome he may deviſe a Rent out of the ſame Lands and Tenements. 4 E. 3. 53. 7 H. 6. 1. 24 H. 8. 5; 22 Aſſ. 78. Abbr. Aſſ. 118. b. 4 E. 2. mordanc. 39. 49 E. 3. 17. F.N.B. 196. 21 H. 6. 38. 2. 7 E. 2. tit. mordanc.

¶ *Que il ad en Fee ſimple.* For lands in tail are not deviſable by Will, and therefore he in this place neceſſarily added (que il ad en Fee ſimple,) and purpoſely omitted the ſame in the clauſe concerning Borough English, becauſe there an eſtate tail is included.

¶ *Poet enter.* Note, the cuſtom of a City or Borough concerning the deviſe of lands is, Quod liceat unicuique civi ſive burgenſi, &c. ejuſdem civitatis ſive burgi, tenementa ſua in eadem civitate ſive burgo in teſtamento ſuo in ultima voluntate ſua tanquam catalla ſua legare cuicunque voluerit, &c. (p) Now if a man deviſeth either by ſpecial name or generally, goods or Chattels real or perſonal, and dieth, the Deviſee cannot take them without the aſſent of the Executors. But when a man is ſeiſed of lands in fee, and deviſeth the ſame in fee, in tail, for life, or for years, the Deviſee ſhall enter; for in that caſe the Executors have no meddling therewith. And in the caſe of a deviſe by Will of lands, whereof the Deviſor is ſeiſed in fee, the freehold or intereſt in Law is in (q) the Deviſee before he doth enter, and in that caſe nothing (r) (having regard to the ſtate or intereſt deviſed) deſcendeth to the heir. But if the heir of the Deviſor entereth, and holdeth the Deviſee out, he may either enter, as Littleton here ſaith, or have his writ called Ex gravi querela: and this writ (without any particular uſage) is incident to the cuſtome to deviſe; for otherwiſe if a deſcent were caſt before the Deviſee did enter, the Deviſee ſhould have no remedy. After an actual poſſeſſion this Writ lieth not, for then the Deviſee may have his ordinary remedy by the Common Law. F.N.B. 199. Reg. in ex gravi Querela. (p) 2 H. 6. 16. 27 H. 8. 2 E. 4. 13. 21 E. 4. 21. 4 H. 7. 16. (q) 4 Mar. Br. tit. deviſe 49. (r) Regiſt. fol. 244. 39 Aſſ. pl. 6. 3 E. 3. deviſe 12. 29 Aſſ. 31. 34 E. 3. tit. Formedon, Pl. poſtr. 30 H. 8. deviſe 28. F.N.B. 198, 199, &c. Britton fol. 212. b.

And well ſaid Littleton, that Lands and Tenements were deviſable in Burghs by cuſtome, for that (f) at the Common Law no Lands or Tenements were deviſable by any laſt Will and Teſtament, nor ought to be transferred from one to another, but by ſolemn livery of ſeiſin, matter of record, or ſufficient writing: but as Littleton here ſaith, by certain private cuſtoms in ſome Burghs they are deviſable. But now ſince Littleton wrote, by the Statutes of 32 and 34 H.8. Lands and Tenements are generally deviſable by the laſt Will in writing of the Tenant in fee ſimple, whereby the ancient (t) Common Law is altered, whereupon many difficult queſtions, and moſt commonly diſcuſſion of heirs, (when the Deviſors are pinched by the meſſengers of death) do ariſe and happen. But (u) theſe Statutes take not away the cuſtome to deviſe, whereof Littleton ſpeaketh: for though lands deviſable by cuſtome be holden by Knights ſervice, yet may the owner deviſe the whole land by force of the cuſtome, and that ſhall ſtand good againſt the heir for the whole. But the deviſe of lands holden by Knights Service by force of the ſtatutes is utterly void for a third, and the ſame ſhall deſcend to the heir. If he hath any lands holden by Knights Service in Capite, and lands in Socage, he can deviſe but two parts of the whole; but if he hold lands by Knights Service of the King, and not in Capite, or of a mean Lord, and hath alſo lands in Socage, he may deviſe two parts of his land holden by Knights Service, and all his Socage lands. If he holds any lands of the King in Capite, and by act executed in his life-time he conveyeth any part of his lands to the uſe of his wife, or of his children, or payment of his debts, though it be with power of revocation; he can deviſe by his Will (x) no more, but to make up the land ſo conveyed two parts of the whole. And if the land ſo conveyed amount to two parts or more, then he can deviſe nothing by his Will. But if he hath land onely that is holden in Socage, then he may deviſe by his Will all his Socage land. So as it is apparent that the benefit of the Lords was more carefully provided for then the good of the heir. But if a man, holding ſome land of the King by Knights Service in Capite, convey two parts of his land to the uſe of his wife for life; now (as hath been ſaid) he can deviſe no part of the reſidue, but yet he may by his Will deviſe the reverſion of the two parts ſo conveyed to his wife: for the intention of the Act is to give power to diſpoſe two parts intirely.

If the Deviſor leave a full third part of the land immediately to deſcend in fee ſimple or in tail, he may deviſe the other two parts in fee ſimple; if a third part be not left, it ſhall be made up according to the Act. But hereditaments that are not of any yearly value, as bona & catalla felonum & fugitivorum, waifs, ſtrays, and the like, can neither be left to deſcend for any part of the third part, or deviſed as part of the two parts. But yet if ſuch Franchiſes of uncertain value be holden of the King in Capite, they ſhall reſtrain the deviſe of all his lands, and make it void for a third part. So it is if a man hath a reverſion expectant upon an eſtate tail, dry and fruitleſſe, holden of the King by Knights Service in Capite; yet that ſhall reſtrain him to deviſe but two parts of his lands onely. And where the ſtatute ſpeaks of a remainder, it is to be intended onely of ſuch a remainder as may draw Ward and Marriage by the Common Law. If a reverſion upon a ſtate for life be granted to one for life, the remainder in fee, during the life of the grantee for life it is not within the ſtatute: but if he dieth, this is ſuch a remainder as is within the ſtatute, although it be dry and fruitleſſe. If a gift in tail or a leaſe for life be made, the remainder in fee, this remainder in fee is not within the ſtatute. But if a man hath lands holden by Knights Service in Capite in poſſeſſion, reverſion, or remainder, and is alſo ſeiſed of Socage land, and deviſe by his Will all his lands, and after he ſelleth away the Capite land, or that land is recovered from him, the Will is good for the whole Socage land. The values both of the third part, and the two parts of the lands, ſhall be taken as they happen to be at the time of the death of the Deviſor, for then his Will takes effect.

He that holds by Knights Service in chief deviſeth by his will a Rent, Common, or other profit, as ſhall amount to the value of two parts out of all his lands; this rent iſſueth onely out of the two parts, and the third part is free of it. And if he hath lands holden by Knights ſervice, and not in Capite, he may charge two parts of the Knights-Service-land, as is aforeſaid, and all his Socage land, &c. And if he hath onely Socage land, he may by his Will charge it at his pleaſure, ſo as the Kings and Lords third part is free, and the heirs two parts charged: and this is onely by force of the ſtatute of 34 H.8.

If a man make a feoffment in fee of his lands holden by Knights ſervice to the uſe of ſuch perſon and perſons, and of ſuch eſtate and eſtates, &c. as he ſhall appoint by his Will; in this Caſe, by operation of Law, the uſe and ſtate veſts in the feoffor, and he is ſeiſed of a qualified fee. In this caſe if the Feoffor limit eſtates by his will, by force, and according to his power, there the uſes and eſtates growing out of the feoffment are good for the whole, and the laſt Will is but directory. But in that caſe if the feoffor had deviſed the land (as owner thereof) without any reference to the feoffment, and power thereby given then taking effect by the Will, it is void for a third part. But if he had formerly conveyed two parts to the uſe of his wife, &c. and after deviſed the reſidue by his Will without any reference to his power by the feoffment.

(f) 27 H.8. cap. 10. Britton fol. 212. 78. b. 164. Vide before in this Sect. 32 H.8. ca. 2. 34 H.8. cap. 5.

(t) Vide lib. 3. fo. 25, &c. in Butler & Bakers caſe. Lib. 6. fol. 16. & 76. Lib. 8. fol. 84, 85. Lib. 9. 133. Lib. 10. 82, 83, 84. Lib. 11. fol. 24. Lib. 12. fol. 25. 2.

(u) Dier 4 & 5 Ph. & Mar. 155. An. 6. Eliz. Daliſon. Paſch. 20 Eliz. between Barber and his wife Plaintiff, and William Long Defendant, in a Writ of partition. Bendloes adjudg.

(x) Lib. 6. fol. 17, 18. Sir Edw. Cleres caſe. Lib. 3. fol. 34. b. Butler and Bakers caſe.

Lib. 10. fol. 80, 81. Leon. Loveys caſe.

Leon. Loveys caſe, and Butler and Bakers caſe, ubi ſupra.

Leon. Loveys caſe, ubi ſupra, fol. 81.

Lib. 8. fol. 84, 85. Sir Richard Pexhals caſe. Lib. 3. fol. 33. Butler and Bakers caſe.

Lib. 6. fol. 17, 18. in Sir Edw. Cleres caſe.

feoffment, yet this Will ſhall enure to declare the uſe upon the feoffment, becauſe he had no power as owner of the land to deviſe any part of it. But if the feoffment had been made to the uſe of his laſt Will, although he deviſeth the land with reference to the feoffment, yet it taketh effect onely by the Will, and not by the feoffment. All which and many other points of intricate and abſtruſe learning you ſhall more largely read in my Reports.

¶ *Sauns aſcun liverie de ſeiſin deſtre fait a luy, &c.* For in his life-time Livery of ſeiſin could not be made, becauſe his Will is ambulatory till his death, and no eſtate paſſeth during his life, neither can Livery be made after his deceaſe, for then it cometh too late. 40 Aſſ. 38.

Here (&c.) implieth that the deviſe is good without any Attornment of any Lord or Tenant.

Sect. 168

¶ NOta, coment que home ne poit granter ne doner ſes tenements a ſa feme durant le coverture, pur ceo que ſa feme & luy ne ſont forſq; un perſon en Ley, uncore p tiel cuſtome il poit deviſer per teſtament ſes tenements a ſa feme, a aver & tener a luy en Fee ſimple, ou en Fee taile, pur terme de vie, ou pur terme des ans; pur ceo que tiel deviſe ne prift effect forſq; apres la mort le Deviſor; car touts deviſes ne preignont effect forſq; apres la mort le deviſor. Et ſi home fait a divers tempz divers teſtaments & divers deviſes, &c. uncore le darrein deviſe & volũt fait p luy eſtoiera, & lauters cõt voides.

ALſo though a man may not grant nor give his Tenements to his Wife during the coverture, for that his Wife and he be but one perſon in the Law, yet by ſuch cuſtome he may deviſe by his Teſtament his Tenements to his Wife, to have and to hold to her in Fee ſimple, or in Fee tail, or for term of life, or years; for that ſuch Deviſe taketh no effect but after the death of the Deviſor. And if a man at divers times makes divers Teſtaments and divers deviſes, &c. yet the laſt Deviſe & Will made by him ſhall ſtand, and the other are void.

¶ *Home ne poet granter ne doner ſes tenements a ſa feme, &c.* This opinion is (a) clear, for by no conveyance at the Common Law a man could, during the coverture, either in poſſeſſion, reverſion, or remainder, limit an eſtate to his wife. But a man may by his deed covenant with others to ſtand ſeiſed to the uſe of his wife, or make a feoffment or other Conveyance to the uſe of his wife: and now the ſtate is executed to ſuch uſes by the ſtatute (b) of 27 H. 8. for an uſe is but a truſt and confidence which by ſuch a mean might be limited by the husband to the wife. But a man cannot covenant with his wife to ſtand ſeiſed to her uſe, becauſe he cannot covenant with her, for the reaſon that Littleton here yelds.

(a) 4 H. 7.

(b) 27 H. 8. cap. 10.

¶ *Durant le coverture.* That is, during the continuance of the marriage. For to cover in Engliſh, is Tegere in Latine, and is ſo called, for that the wife is ſub poteſtate viri, and ſhe is diſabled to contract with any without the conſent of the husband. (c) Omnia quæ ſunt uxoris ſunt ipſius viri: non habet uxor poteſtatem ſui, ſed vir.

(c) Bracton lib. 2. cap. 15.

¶ *Un perſon en Ley.* Vir & uxor ſunt quaſi unica perſona, quia caro una, & ſanguis unus: res licet ſit propria uxoris, vir tamen ejus cuſtos, cum ſit caput mulieris. Idem, l. 5. tract. 5. cap. 25.

If Ceſtuy que uſe had deviſed that his wife ſhould ſell his land, and made her Executrix, and died, and ſhe took another husband, ſhe might ſell the land to her husband, for ſhe did it in auter droit, and her husband ſhould be in by the Deviſor. 10 H. 7. 20.

¶ *Per teſtament.* Teſtamentum is (as is ſaid before) Teſtatio mentis, and is favourably

rably to be expounded according to the meaning of the Teſtator. In contractibus benigna, in teſtamentis benignior, in reſtitutionibus benigniſſima interpretatio facienda eſt.

(d) 4 E.2. tit. Deviſe 23.
(e) 44 Aſſ. p.36. 44 E.3.33. 18 E.3.8.
(f) Britton 264.

¶ *A ſon feme.* And Littleton himſelf yieldeth the reaſon, (d) becauſe the deviſe doth not take effect till after the deceaſe of the Deviſor. And in ſome (e) places the cuſtom is general, that he may deviſe any lands, &c. In ſome (f) places lands onely which the Deviſor purchaſed. In ſome places he may deviſe any eſtate. In ſome places for life onely, &c.

But albeit the laſt Will doth not take effect untill after his deceaſe, yet if a Feme Covert be ſeiſed of lands in fee, ſhe cannot deviſe the ſame to her husband, becauſe at the making of her Will ſhe had no power, being ſub poteſtate viri, to deviſe the ſame, and the Law intendeth it ſhould be done by coercion of her husband.

H.5.8. 2 R.3.22.

¶ *Divers teſtaments.* For Voluntas Teſtatoris eſt ambulatoria uſque ad mortem, (as hath been ſaid before) and the latter Will doth countermand the firſt. And it is truly ſaid, that the firſt grant and the laſt Will is of greateſt force.

¶ *Divers deviſes, &c.* Here by (&c.) is to be underſtood aſwell deviſes of Chattels reall or perſonall, as of freehold and inheritance. Alſo that in one Will where there be divers deviſes of one thing, the laſt deviſe taketh place. Cum duo inter ſe pugnantia reperiuntur in teſtamento, ultimum ratum eſt.

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¶ *Que ſes Executors poient aliener ou vender ſes tenements.* And that which in Littleton's time a man might do by Cuſtome in ſome particular places, he may now do by the ſtatutes of 32 & 34 H.8. generally.

32 H.8. cap.2.
34 H.8. cap.5.

¶ *Les Executors apres le mort lour teſtator poient vender.* Here it appeareth, that the Executors having but a power, as Littleton putteth the caſe, to ſell, they muſt all joyn in the ſale. Then put the caſe that one dies, it is regularly true, that being but a bare authority, the ſurvivors cannot ſell. But if a man deviſeth his land to A. for term of life, and that after his deceaſe his lands ſhall be ſold by his Executors generally, (as Littleton here putteth his caſe,) and make three or four Executors, and during the life of A. one of the Executors dieth, and then A. dieth, the other two or three Executors may ſell, becauſe the land could not be ſold before, and the plurall number of his Executors remain. But if they had been named by their names, as by J.S. J.N. J.D. and J.G. his Executors,

49 E.3.16. 29 Aſſ.17. 39 Aſſ.17. 9 H.6.24. 15 H.7. 12.21. 14 H.8.6. 30 H.8. tit. Deviſe Br.31. 2 Eliz. Dier 177.

¶ Item p tiel cuſtome home poit deviſer per ſon teſtament, que ſes Executors poient aliener & vender ſes tenemẽts que il ad en fee ſimple p certeine ſumm de money, a diſtributer p ſon alme. En ceſt cas, coment que le deviſor devie ſeiſie de les tenements, & les tenements diſcendont a ſon heire, uncore les executors apres le mort lour teſtator poyent vender les tenẽts iſſint a eux deviſes, & ouſte le hr̃, & ent fait feoffm̃t, alienation, & eſtate p fait, ou ſãs fait, a eux a queux l' vend̃ eſt fait. Et iſſint pois deier icy ũ cas ou hõe poit faire loial eſtat, & uncore il navoit ries en

Alſo by ſuch cuſtom a man may deviſe by his Teſtament, that his Executors may alien and ſell the Tenements that he hath in Fee ſimple for a certain ſum, to diſtribute for his Soul. In this caſe, though the deviſor die ſeiſed of the tenements, and the tenements deſcend unto his heir, yet the Executors after the death of the Teſtator may ſell the tenements ſo deviſed them, and put out the heir, & thereof make a feoffment, alienation, and eſtate by Deed, or without deed, to them to whom the ſale is made. And ſo may ye here ſee a caſe where a man may make a lawfull eſtate,

les

les Tenements al temps del eſtate fait. Et le cauſe eſt, pur ceo que la cuſtome & uſage ad eſte tiel. Quia conſuetudo ex certa cauſa rationabili uſitata privat Communem Legem.

and yet he hath nought in the tenements at the time of the eſtate made. And the cauſe is, for that the cuſtome and uſage is ſuch. *For a cuſtome uſed upon a certain reaſonable cauſe depriveth the Common Law.*

then in that caſe the ſurvivors could not ſell the ſame, becauſe the words of the Teſtator could not be ſatisfied. And I my ſelf knew this caſe adjudged*: A ſpecial verdict was found, that A. was ſeiſed of certain lands in Fee, and deviſed the ſame in tail, and if the Donee died without iſſue, that his ſaid land ſhould be ſold by his ſons in Law, he in truth having five ſons in law; one of his ſons in law died in the life of the Donee, and after the Donee died without iſſue, and then the four of the ſons in law ſold the land: and it was adjudged that the ſale was good, becauſe they were named generally, by his ſons in law, and the Lands could not be ſold by them all. And the words of the Will, in a benign interpretation, are ſatisfied in the plurall number, albeit they had but a bare authority: but if they had bin particularly named, it had been otherwiſe. But if a man deviſeth lands to his Executors to be ſold, and maketh two Executors, and the one dieth, yet the ſurvivor may ſell the land, becauſe as the ſtate, ſo the truſt ſhall ſurvive: and ſo note the diverſity between a bare truſt, and a truſt coupled with an intereſt. In both thoſe caſes the Executors may (a) ſell part of the land at one time, and part at another, as they may find purchaſers.

(*) Hill. 26 El. inter Vincent & Lee, in the Kings Bench.

39 Aſſ.p.17.4 Eliz. Dier 210. 23 Eliz. Dier 371. Paſch. 32 Eliz. Ro.1307. in Communi Banco, and ſo reſolved in Vincents caſe.

(a) Lib.1. fol. 173. in Digges caſe.

In Littletons caſe admit that one Executor had refuſed to ſell, then (as the Law ſtood when Littleton wrote) it was clear that the others could not ſell: but now by the ſtatute (b) of 21 H.8. it is provided, that where lands are willed to be ſold by Executors, that though part of them refuſe, yet the reſidue may ſell. And albeit the Letter of the Law extendeth onely where Executors have a power to ſell, yet being a beneficiall Law, it is by conſtruction extended where lands are deviſed to Executors to be ſold. Yet in neither of thoſe caſes, albeit one refuſe, can the other make ſale to him that refuſed, becauſe he is party and privie to the laſt Will, and remain Executor ſtill. Mine advice to them that make ſuch deviſes by Will is, to make it as certain as they can; as that the ſale be made by his Executors, or the Survivors or ſurvivor of them, if his meaning be ſo, or by ſuch or ſo many of them as take upon them the probate of his Will, or the like. And it is better to give them an Authority then an eſtate, unleſſe his meaning be they ſhould take the profits of his lands in the mean time, and then it is neceſſary that he deviſeth, that the mean profits till the ſale ſhall be aſſets in their hands, for otherwiſe they ſhall not be ſo. But hereof thus much ſhall ſuffice.

(b) 21 H.8. cap.4.

Tr. 27 H.8. in the Common Pleas, Serjeant Bendloes report.

¶ *Et ent faire feoffment.* For albeit the Executors in this caſe have no eſtate or intereſt in the land, but onely a bare and naked power, yet this Feoffment amounteth to an alienation, to veſt the land in the Feoffee, as it appeareth here, and the Feoffee ſhall be in by the Deviſor.

49 E.3.18.38 Aſſ.3.39 Aſſ.17. 13 E.3. deviſe 3. 14 H.8.10. 15 H. 7. 12. b.

¶ *Per fait ou ſauns fait.* And therefore if by the cuſtome a man deviſeth that a Reverſion, or any other thing that lieth in grant, ſhall be ſold by the Executors, they may ſell the ſame without Deed, for the Vendee ſhall be in by the Deviſor, and not by the Executors, as hath been ſaid.

19 H.6.

¶ *Conſuetudo ex certa cauſa rationabili uſitata privat communem legem.* Quia conſuetudo contra rationem introducta potius uſurpatio quam conſuetudo appellari debet. Conſuetudo præſcripta & legitima vincit legem.

¶ *Privat communem legem.* For no cuſtom or preſcription can take away the force of an Act of Parliament, and therefore Littleton materially ſpeaketh here of the Common Law.

4 E.4.4. 11 H.4.7. 39 H.6.36. 7 H.6.1. 2.9 H.6.36. 8 H.7.12. 8 Eliz. Dier 247.

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¶ ET nota que nul cuſtome eſt allowable, meſque tiel cuſtome que ad eſte uſe

AND note, that no cuſtome is to be allowed, but ſuch cuſtome as hath bin uſed

¶ *Preſcription.* Preſcription is a title taking his ſubſtance of uſe and time allowed by the law; Præſcriptio eſt titulus ex uſu & tempore ſubſtantiã capiens

capiens ab authoritate Legis. In the Common Law a preſcription which is perſonal is for the moſt part applied to perſons, being made in the name of a certain perſon, and of his Anceſtors, or thoſe whoſe eſtate he hath, or of bodies politique or corporate, & their Predeceſſors: for as a natural body is ſaid to have Anceſtors, ſo a body politique or corporate is ſaid to have Predeceſſors. And a cuſtome which is local is alleaged in no perſon, but laid within ſome Mannor or other place. As taking one example for many, J. S. ſeiſed of the manor of D. in fee preſcribeth thus: That J. S. his Anceſtors, & all thoſe whoſe eſtate he hath in the ſaid Mannor, have time out of mind of man had and uſed to have Common of paſture, &c. in ſuch a place, &c. being the land of ſome other, &c. as pertaining to the ſaid Mannor. This properly we call a Preſcription. A cuſtome is in this manner: A Copyholder of the Mannor of D. doth plead, that within the ſame Mannor there is & hath been ſuch a cuſtome time out of mind of man uſed, that all the Copyholders of the ſaid Mannor have had and uſed to have Common of paſture, &c. in ſuch a waſt of the Lord, parcell of the ſaid Mannor, &c. where the perſon either doth or can preſcribe, but alleageth the cuſtome within the Mannor. But both to Cuſtomes and Preſcriptions theſe two things are incident inſeparable, viz. Poſſeſſion or Uſage, and Time. Poſſeſſion muſt have three qualities; it muſt be long, continual, and peaceable, Longa, continua, & pacifica: for it is ſaid, Transferuntur dominia ſine titulo & traditione per uſucaptionem, s. per longam, continuam, & pacificam poſſeſſionem. Longam, i. per ſpatium temporis per legem definitum, of which hereafter ſhall be ſpoken. Continuam dico, ita quod non ſit legitime interrupta.

12 E.4.1. 2 Mariæ, Br. Preſcr. 100. 6 E.6. Dier 71. 14 E.3. Bar. 277. 43 E.3. 32. 7 H.6.26. 22 H.6. 14. 16 E.2. tit. Preſcr. 53. 45 Aſſ. S. 40 Aſſ. 27. 41. 21 E.4. 53, 54.

Bracton fol. 51, 52.

per title de preſcription, s. ỏ temps dont memorie ne curt. Mes divers Opinions ont eſte de temps dont memorie, &c. & ỏ title per preſcription, q̃ eſt tout un en Ley. Car alcuns ont dit, que temps de memorie ſerra dit de temps de limitation en un briefe de droit, ſcilicet de temps le Roy R. le 1. puis le conqueſt, come eſt done per l'ſtatute de Weſtminſter 1. pur ceo que le briefe de droit eſt le pluis haut briefe en ſa nature que poit eſtre. Et per tiel briefe home poit recover ſon droit de la poſſeſſion ſon Auncеſtors de pluis auncient temps que home purroit per alcun briefe per le ley, &c. Et entant que il eſt done per le dit eſtatute, que en briefe de droit nul ſoit oye a demander de le ſeiſin ſon Auncеſtors de pluis longe temps que de temps le Roy R. avantdit; iſſint ceo eſt prove q̃, continuance de poſſeſſion, ou auters cuſtomes & uſages uſes puis le dit temps, eſt le title de preſcription, &c. & hoc certum eſt. Et auters

by title of preſcription, that is to ſay, from time out of mind. But divers opinions have been of time out of mind, &c. and of title of preſcription, which is all one in the Law. For ſome have ſaid, that time of mind ſhould be ſaid from time of limitation in a Writ of Right, that is to ſay, from the time of King *Richard* the firſt after the Conqueſt, as is given by the Statute of Weſtminſter the firſt, for that a Writ of Right is the moſt high Writ in his nature that may be. And by ſuch a Writ a man may recover his right of the poſſeſſion of his Anceſtors of the moſt ancient time that any man may by any writ by the Law, &c. And in ſo much that it is given by the ſaid Eſtatute, that in a Writ of right none ſhall be heard to demand of the Seiſin of his Anceſtors of longer time then of the time of King *Richard* aforeſaid; therefore this is proved, that continuance of poſſeſſion, or other cuſtomes & uſages uſed after the ſame time, is the title of

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ont dit, que bien & verity eſt, que ſeiſin & continuance puis le dit limitation, &c. eſt un title de preſcription, come eſt avantdit, & per cauſe avantdit. Mes ils ont dit que il y auxy un auter title de preſcription, que fuit a la common ley devant aſcun eſtatute de limitation de briefe, &c. & ceo fuit lou un cuſtome ou un uſage, ou auter choſe, ad eſte uſe de temps dont memory des homes ne curt a le contrarie. Et ils ont dit, que il eſt prove per le pleder: lou home voit pleder un title de preſcription de cuſtome, il dirra que tiel cuſtome ad eſte uſe de tempore cujus contrarium memoria hominum non exiſtit, & ceo eſt autant a dire, quant tiel matter eſt plede q̄ nul home adonqꝫ en vie ad oye aſcun proofe a l' contrary, ne avoit aſcun conuſans a l' contrary. Et entant que tiel title de preſcription fuit a le common ley, & nient ouſte per aſcun eſtatute, ergo il demurt come il fuit a le common ley; & le pluis toſt, entant que la dit limitation de briefe de droit eſt de cy long tempz paſſe. Ideo

of preſcription, &c. & this is certain. And others have ſaid, that well and truth it is, that ſeiſin and continuance after the limitation, &c. is a title of preſcription, as is aforeſaid, and by the cauſe aforeſaid. But they have ſaid that there is alſo another title of preſcription, that was at the Common Law before any eſtatute of limitation of writs, &c. and that it was where a cuſtome or uſage, or other thing, hath been uſed for time whereof mind of man runneth not to the contrary. And they have ſaid, that this is proved by the pleading: where a man will plead a title of preſcription of cuſtome, he ſhall ſay that ſuch cuſtome hath been uſed from time whereof the memory of men runneth not to the contrary, that is as much as to ſay, when ſuch a matter is pleaded that no man then alive hath heard any proof of the contrary, nor hath no knowledge to the contrary. And inſomuch that ſuch title of preſcription was at the Common Law, and not put out by an eſtatute, *Ergo* it abideth as it was at the Common Law; and the rather, inſomuch that the ſaid limitation of a writ of right is of ſo long time paſſed. *Ideo quære de hoc.* And

Pacificam dico, quia ſi contentioſa fuerit, idem erit quod prius, ſi contentio fuerit juſta. Ut ſi verus Dominus, ſtatim cum intruſor vel diſſeiſor ingreſſus fuerit ſeiſinam, nitatur tales viribus repellere, & expellere, licet id quod inceperit perducere nō poſſit ad effectum, dum tamen cum defecerit diligens ſit ad impetrandum & proſequendum. Longus uſus nec per vim, nec clam, nec precario, &c. Idem fol.222. b.

If a man preſcribeth to have a rent, and likewiſe to take a Diſtreſſe for the ſame, it cannot be avoided by pleading that the rent hath been always payd by coherſion, albeit it began by wrong. 13 E.4.6.

¶ *Un title de preſcription.* Seeing that preſcription maketh a title, it is to be ſeen, firſt, to what things a man may make a title by preſcription without charter; and ſecondly, how it may be loſt by interruption.

For the firſt, as to ſuch Franchiſes and Liberties as cannot be ſeiſed as forfeited, before the cauſe of forfeiture appear of Record, no man can make a title by preſcription, becauſe that preſcription being but an uſage in pais, it cannot (*) extend to ſuch things as cannot be ſeiſed nor had without matter of Record: as to the goods and Chattels of Traitors, Felons, Felons of themſelves, Fugitives, of thoſe that be put in Exigent; 21 H.6. Preſcrip.44. 21 E.4.6. 1 H.7.23. 9 H.7.11.20. 7 H.6.45. 6 E.3.32.42. 45 E.3.2. 2 E.4.26. (*) Fleta lib.1. cap.25. Brit. fo.6. & 15. 44 Aſſ.p.8. 49 E.3.3. Stanf. Pl. Cor. 21.51. lib.5. fol.109, 110. Lib.9. fol.29.

ner, &c. to make Conſervators of the peace, &c.

de hoc quære. Et pluſors many other cuſtomes auters cuſtomes & uſages and uſages have ſuch ont tiels ancient burghs. ancient Boroughs.

(e) 22 E.3. Coron. 241. 9 H.7.11.20. 18 H.6. prerip.45. 11 H.4.10. 21 H.7. 33. 9 E.4.12. 39 E.3.35. 46 E.3.16. 11 H.6.25.F.N.B. 91. 1 H.7. 24. Stanf. Pl. Cor. 38. 44 E.3.4. 22 E.4.43,44. 3 E.3. Brook preſcrip.57. 44 Aſſ. Pl.

(e) But to Treaſure Trove, Waifs, Eſtraies, Wrecks of ſea, to hold Pleas, Courts of Leets, Hundreds, &c. Infange thief, Outfange thief, to have a Park, Warren, Royal fiſhes, as Whales, Sturgeons, &c. Faires, Markets, Frankfoldage, the keeping of a Gaol, Toll, a Corporation by preſcription, and the like, a man may make a Title by uſage and preſcription only, without any matter of Record.

(*) Vide Sect. 310. where a man ſhall make a Title to lands by preſcription.

(*) 8 H.6.16.

But it is to be obſerved, (f) that although a man cannot, as is aforeſaid, preſcribe in the ſaid Franchiſe to have Bona & catalla proditorum, felonum, &c. yet may they and the like be had obliquely or by a mean by preſcription. For a County Palatine may be claimed by preſcription, and by reaſon thereof to have Bona & catalla proditorum, felonum, &c.

(f) 12 E.4.16. 32 H.6.25. 12 Eliz. Dier 288,289.

As to the ſecond, by what means a Title by preſcription or cuſtome may be loſt by interruption; It is to be known, that the Title being once gained by preſcription or cuſtome, cannot be loſt by interruption of the poſſeſſion for 10. or 20. years, but by interruption in the Right: as if a man have had a Rent or Common by preſcription, unity of poſſeſſion of as high and perdurable eſtate is an interruption in the right.

11 E.3. tit. iſſue 40.

In a Writ of Meſne the Plaintiff made his Title by preſcription, that the Defendant and his Anceſtors had acquited the Plaintiff and his Anceſtors and the Terre-tenant time out of mind, &c. the Defendant took iſſue, that the Defendant and his Anceſtors had not acquited the Plaintiff and his Anceſtors and the Terre-tenant: and the Jury gave a ſpecial verdict, that the Grandfather of the Plaintiff was infeoffed by one Agnes, and that Agnes and her Anceſtors were acquited by the Anceſtors of the Defendant time out of mind before that time, ſince which time no acquitall had been: and it was adjudged and affirmed in a Writ of Errour, that the Plaintiff ſhould recover his Acquitall, for that there was once a Title by preſcription veſted, which cannot be taken away by a wrongfull Ceſſer to acquite of late time; and albeit the verdict found againſt the letter of the iſſue, yet for that the ſubſtance of the Iſſue was found, viz. a ſufficient Title by preſcription, it was adjudged both by the Court of Common Pleas, and in the Writ of Error by the Court of Kings Bench, for the Plaintiff; which is worthy of obſervation.

15 E.3. tit. judgment 133. 13 E.3. ibid.155.

(*) Mich. 43 & 44 Eliz. in a Prohibition between Nowell Pl. & Hicks Vicar of Edmonton Defendant, in the Kings Bench.

So a Modus decimandi was alledged (*) by preſcription time out of mind for Tithes of Lambs, and thereupon iſſue joyned; and the Jury found that before 20. years then laſt paſt there was ſuch a preſcription, and that for theſe 20. years, he had paid Tithe Lamb in ſpecie. And it was objected, firſt, That the iſſue was found againſt the Plaintiff, for that the preſcription was general for all the time of preſcription, and 20. years fail thereof. 2. That the party by payment of Tithes in Specie had waived the preſcription or cuſtome. But it was adjudged for the Plaintiff in the prohibition; for albeit the Modus decimandi had not been paid by the ſpace of 20. years, yet the preſcription being found, the ſubſtance of the iſſue is found for the Plaintiff. And if a man hath a Common by preſcription, and taketh a leaſe of the land for 20. years, whereby the Common is ſuſpended, after the years ended he may claim the Common generally by preſcription; for that the ſuſpenſion was but to the poſſeſſion, and not to the right, and the inheritance of the Common did alwayes remain; and when a preſcription or cuſtome doth make a Title of inheritance, (as Littleton ſpeaketh) the party cannot alter or waive the ſame in pais.

¶ *Temps dont memory, &c. & de title per preſcription, que eſt tout un en Ley.* So as the time preſcribed or deſined by Law is, time whereof there is no memory of man to the contrary. (e) Omnis querela, & omnis actio injuriarum limitata infra certa tempora.

(e) Bracton fol.314.

¶ *Temps de limitation.* Limitation, as it is taken in Law, is a certain time preſcribed by Statute, within the which the Demandant in the action muſt prove himſelf or ſome of his Anceſtors to be ſeiſed.

¶ *En briefe de droit.* In (f) ancient time the limitation in a Writ of Right was from the time of H.1. whereof it was ſaid, à tempore Regis Henrici ſenioris. After that by the Statute of (g) Merton the limitation was from the time of H. 2. and by the Statute (h) of W. 1. the limitation was from the time of R.1. And this is that limitation that Littleton here ſpeaketh of: Wherefof in the Mirror in reproof of the Law it is thus ſaid, (i) Abuſion eſt de counter cy longe temps dount nul ne poet teſtmoigner de vieu & de oyer, que ne dure my generalment ouſter 40. ans.

(f) Regiſt.158. Brack. fo.373. 5 Aſſ. p.2. 34 H.6.40.

(g) Stat. de Mert. 20 H.3. c.8.

(h) Weſt.1. an. 3 E.1. c.38. Vide W.2. 13 E 1. c.46.

(i) Mirror cap.5. Sect.1.

Time

Time of limitation is two-fold. First, in Writs, and that is by divers Acts of Parliament. Secondly, to make a title to any Inheritance, and that (as Littleton here saith) is by the Common Law.

Glanv. l. 13. c. 3. & 34. Mirror cap. 5. sect. 4. Flet. l. 2. c. 38. & l. 4. ca. 5. Britton fol. 79. 82.

Limitation of times in Writs is provided by the said Statute of Merton, and after by the said Statute of W. 1. which Littleton here citeth, and which was in force when he wrote, but is since altered by a profitable and necessary Statute (k) made Anno 32 H. 8. and by that Act the former limitation of time in a Writ of Right is changed, and reduced to thirtie years next before the Teste of the Writ, and so of other Actions, as by the Statute at large appeareth. But it is to be observed, that this Act of 32 H. 8. extendeth (l) not to a Formedon in the Discender, nor to the services of Escuage, Homage and Fealty, for a man may live above the time limited by the Act: neither doth it extend to any other service which by common possibility may not happen or become due within sixty years; as to cover the hall of the Lord, or to attend on his Lord when he goeth to War, or the like; nor where the seisin is not traversable or issuable: neither doth it extend to a Rent created by Deed, nor to a Rent reserved upon any particular estate; for (m) in the one case the Deed is the Title, and in the other the reservation: nor to any Writ of Right of Advowson, Quare impedit, or Assise of Darreine presentment, (for there was a Parson of one of my Churches that had been Incumbent there above fifty years, and died but lately) or any Writ of Right of Ward, or Raptishment of Ward, &c. but they are left as they were before the Statute of 32 H. 8. But hereof thus much for the better understanding of Littleton shall suffice.

(k) 32 H. 8. cap. 2. See the second part of the Institutes. Merton c. 8.

(l) Mich. 10 & 11 Eliz. Dier 278. Fitz-Williams Case.

(m) Lib. 8. fol. 65. Sir Wil. Fosters Case.

¶ *De temps le Roy R.* 1. And that was intended from the first day of his Reign, for (from the time) being indefinitely, doth include the whole time of his Reign, which is to be observed.

Lib. 4. fol. 10, 11. Bevils Case.

1 Mar. Parliam. 2. cap. 3. Vide 17 E. 3. 11. Pl. Com. 371. b.

Vide 34 H. 6. 36.

¶ *Briefe de droit.* Breve de recto, a Writ of Right, so called, for that the words in the Writ of Right are, Quod sine dilatione plenum rectum teneas.

¶ *Title de prescription al Common Ley, &c. de temps dont memorie des homes ne curge al contrarie.* Docere oportet longum tempus, & longum usum illum, viz. qui excedit memoriam hominum; tale enim tempus sufficit pro jure.

Bract. lib. 4. fol. 230. Fleta lib. 4. cap. 24.

¶ *Ascun proofe al contrarie.* For if there be any sufficient proof of Record or writing to the contrary, albeit it exceed the memory or proper knowledge of any man living, yet is it within the memory of man: for memory or knowledge is twofold. First, by knowledg by proof, as by Record or sufficient matter of writing. Secondly, by his own proper knowledg. A Record or sufficient matter in writing are good memorials, for Litera scripta manet. And therefore it is said, when we will by any Record or writing commit the memory of any thing to posterity, it is said tradere memoriæ. And this is the reason that regularly a man cannot prescribe or alleage a Custome against a Statute, because that is matter of Record, and is the highest proof and matter of Record in Law. But yet a man may prescribe against an Act of Parliament, when his Prescription or Custom is saved or preserved by another Act of Parliament.

28 Ass. 25. 38 Ass. 18. 45 E. 3. 26. 5 H. 7. 10. 8 H. 7. 7. 11 H. 7. 21. Diet 23 Eliz. 273.

There is also a diversity between an Act of Parliament in the negative, and in the affirmative: for an affirmative Act doth not take away a Custom, as the Statutes of Wills of 32 and 34 H. 8. do not take away a Custom to devise Lands, as it hath been often adjudged. Moreover, there is a diversity between Statutes that be in the negative; for if a Statute in the negative be declarative of the ancient Law, that is, in affirmance of the Common Law, there as well as a man may prescribe or alleage a Custom against the Common Law, so a man may do against such a Statute; for, as our Author saith, Consuetudo, &c. privat communem legem. As the Statute of Magna Charta provideth that no Leet shall be holden but twice in the year, yet a man may prescribe to hold it oftner and at other times; for that the Statute (n) was but in affirmance of the Common Law.

Magna Charta cap. 35. (n) 6 H. 7. 2. 8 H. 4. 34. 12 H. 7. 18. 31 H. 6. Leet 11. 18 H. 6. 13.

So the Statute (o) of 34 E. 1. provideth that none shall cut down any trees of his own within a Forrest without the view of the Forrester: but inasmuch as this Act is in affirmance of the Common Law, a man may prescribe to cut down his woods within a Forrest without the view of the Forrester. And so was it adjudged in 16 Eliz. in the Exchequer by Sir Edward Sanders, Chief Baron, and other the Barons of the Exchequer, as Sir John Popham Chief Justice of the Kings Benchreported to me.

(o) 34 E. 1. tit. Forest, Rast. 1 E. 3. cap. 2.

In the Eire of the Forrest of Pickering before Willoughby, Hungerford and Hanbury; Justices Itinerants there, Anno 8 E. 3. I read (p) a claim made by Henry de Percy, Lord of the Mannor of Semor within the said Forrest: the Forresters, Verderours and Regarders found his claim to be true, viz. Quod prædictus Henricus de Percy, & omnes antecessores sui, tenentes

(p) Itin. Pickering an. 8 E. 3. Rot. 38.

manerium prædictum, à tempore quo non extat memoria & ſine interruptione aliquali tenuerunt prædictum manerium cum pertinentiis extra regardum Foreſtæ, & habuerunt Woodwardum portantem arcum & ſagittas, ad præſentandum præſentanda de venatione tantum, &c. & habuerunt in boſcis ſuis de Semere forgeas & mineras, & amputarunt, dederunt, & vendiderunt boſcum ſuum infra manerium prædictum ſine viſu foreſtariorum pro voluntate ſua, & fugarunt & ceperunt Vulpes, Lepores, Capreolos, &c. ſicut idem Henricus Percy ſuperius clamat. Which claim by preſcription, found as is aforeſaid, the Juſtices doubted only of two points. The firſt, foraſmuch as the ſaid Mannor was within the limits of the Forreſt, it ſhould not only be Contra aſſiſam Foreſtæ, for his Woodward to bear Bow and Arrows, where by Law he ought to bear but an Hatchet, and no Bow nor Arrows, within the Forreſt, but alſo de facili cedere poſſit in deſtructionem ferarum, &c. and they therefore doubted whether it might be claimed by preſcription. Their ſecond doubt was concerning fugationem & captionem Capreolorum in boſcis ſuis prædictis, eo quod eſt beſtia venationis Foreſtæ, & tranſgreſſores inde convicti finem facerent ut pro tranſgreſſione venationis. And for that difficulty the claim was adjourned into the Kings Bench. But of the other parts of the Preſcription no doubt at all was made: and the like had been allowed in the ſame Eire, as in the caſe of Thomas Lord Wake of Lydell, and of Gilbert of Acton in the ſame Eire, Rot. 37. and of others.

¶ *Il eſt prove per le pleader.* Note, one of the beſt arguments or proofs in Law is drawn from the right entries or courſe of pleading; for the Law it ſelf ſpeaketh by good pleading: and therefore Littleton here ſaith, It is proved by the pleading, &c. as if pleading were ipſius legis viva vox.

¶ *Entant que tiel title per preſcription fuit al common ley, &c.* Note, all the preſcriptions that were limited from a certain time were by Act of Parliament; as from the time of H. 1. which was the firſt time of limitation ſet down by any Act of Parliament, and ſo from the Reign of R. 1. &c. But this preſcription of time out of memory of man was (as Littleton here ſaith) at the Common Law, and limited to no time. Alſo here is implied a Maxime of the Law, viz. That whatſoever was at the Common Law, and is not ouſted or taken away by any Statute, remaineth ſtill.

¶ *Common Ley.* The Law of England is divided, as hath been ſaid before, into three parts: 1. the Common Law, which is the moſt general and ancient Law of the Realm, of part whereof Littleton wrote; 2. Statutes or Acts of Parliament; and 3. particular Cuſtomes, (whereof Littleton alſo maketh ſome mention:) I ſay particular, for if it be the general Cuſtome of the Realm, it is part of the Common Law.

The Common Law hath no controller in any part of it but the high Court of Parliament, and if it be not abrogated or altered by Parliament, it remains ſtill; as Littleton here ſaith. The Common Law appeareth in the Statute of Magna Charta and other ancient Statutes, (which for the moſt part are affirmations of the Common Law) in the original Writs, in judicial Records, and in our books of terms and years. Acts of Parliament appear in the Rolls of Parliament, and for the moſt part are in print. Particular Cuſtoms are to be proved.

Sect. 171.

¶ *Ville.* Villa quaſi vehilla, quod in eam convehantur fructus. And it is called Vicus, becauſe it is prope viam. Villa eſt ex pluribus manſionibus vicinata, & collata ex pluribus vicinis. If a Town be decayed ſo as no houſes remain, yet it is a Town in Law. And ſo if a Borough be decayed, yet ſhall it ſend Burgeſſes to the Parliament, as old Salisbury and others do. It cannot be a Town in Law, unleſſe it hath, or in time paſt hath had, a Church, and celebration of Divine Service, Sacraments, and Burials. What alteration hath been made in Towns, hear what a great Lawyer ſaith, In Anglia Villula tam parva inveniri non poterit, in qua non eſt Miles, Armiger, vel Paterfamilias, &c. magnis ditatus poſſeſſionibus; nec non liberi tenentes alii & valecti plurimi ſuis patrimoniis ſufficientes, &c. And it appeareth by Littleton, that a Town is the Genus, and a Borough is the Species; for he ſaith that every Borough is a Town, but every Town is not a Borough. Et ſub appellatione Villarum continentur Burgi & Civitates.

Vid. Linwood verbo vicus. Bract. lib. 5. fol. 434. & lib. 4. fol. 211. Forteſcue cap. 29. 7 E. 6. fines levie de terre. Br. 91.

¶ Item, chescun Burgh eſt un ville, mes nemy è converſo. Plus ſerra dit de cuſtome en le Tenure de Villenage.

Alſo, every Borough is a Town, but not *è converſo*. More ſhall be ſaid of cuſtome in the tenure of Villenage.

34 E. 1. Quare imp. 187.

Forteſcue cap. 29.

Forteſcue cap. 24.

Bere-

Berewica, or Berewit, in Domeſday ſignifieth a Town: Hæ Berewicæ pertinent ad Berchley. (Et Domeſday, Glouc. ſic recitat plus quam viginti villas.)

There be in England and Wales eight thouſand eight hundred and three Towns, or thereabout.

Bract. ubi ſupra. Flet. lib. 4. cap. 15. & lib. 6. cap. 49. Brit. fol. 124. & 274. &c.

De more De villis, parochiis, & hamlettis, in the ancient Authors of the Law, and plentifully in our other Books. But let us now hear what Littleton ſaith.

CHAP. II. *Villenage.* *Sect.* 172.

¶ TEnure en villenage eſt plus proprement, quant un villein tient de ſon Seignior a que il eſt villeine certeine terres ou tenements ſolonque le cuſtome del manor, ou auterment a la volunt ſon ſeignior, & de faire a ſon Seignior villein ſervice; come de porter & de carier le fime le Sfir hors del City, ou del Manor ſon Seignior, jeſques a la terr ſon Seignior, en giſant ceo ſur le terre, & hujuſmodi. Et aſcuns franke homes teignont lour tenements ſolonque le cuſtome del certeine manors per tiels ſervices. Et lour tenure auxy eſt appel Tenure en villenage, & uncore ils ne ſont pas villeines. Car nul tre tenus in Villenage, ou villeine terre, ne aſcun cuſtome ſurdant de la tre, ne unques terra

TEnure in villenage is moſt properly, when a Villein holdeth of his Lord to whom he is a Villein certain lands or tenements according to the Cuſtome of the Mannor, or otherwiſe at the will of his Lord, and to doe to his Lord villein-ſervice; as to carry and recarry the dung of his Lord out of the City, or out of his Lords Mannor, unto the Land of his Lord, and to ſpread the ſame upon the Land, and ſuch like. And ſome free-men hold their Tenements according to the cuſtome of certain Mannors by ſuch ſervices. And their Tenure alſo is called Tenure in villenage, and yet they are not villeins. For no land holden in villenage, or villein land, nor any cuſtome ariſing out of the land, ſhall ever make a free man villein; but a

¶ *Tenure en villenage.* Villein is from the French word Villaine, and that à villa, quia villæ adſcriptus eſt: for they which are now called Villani, of ancient times were called Adſcriptitii; and in the common law he is called Nativus, quia pro majore parte natus eſt ſervus: and this is he which the Civilians call ſervus. (a) Theyn in the Saxon tongue is Liber, and Then, ſervus. Theme (ſometimes written Theame corruptly) is an old Saxon word, and ſignifieth Poteſtatem habendi in nativos ſive villanos cum eorum ſequelis, terris, bonis, & catallis. But Teame, ſometimes corruptly written Theame, is of another ſignification; for it is alſo an old Saxon word, (b) and ſignifieth where a man cannot produce his warrant of that which he bought according to his Voucher.

Lib. rub. 76, & 77. Glanv. l. 5. ca. 1, & 2, &c. Vide Bract. li. 1. ca. 6, &c. Britt. fol. 77. & 67. 82. 97, 98. 125, 126. 147. Flet. l. 1. c. 3. Flet. l. 2. c. 44. Idem l. 4. cap. 11, & 12. Mir. ca. 2. ſect. 18. Ockam.

(a) Flet. li. 1. cap. 24.

(b) Vide Lamb. inter Leges Sancti Edw. fol. 132. nu. 25.

¶ *Villenage.* Villenagium (as in like caſes hath been ſaid, when the termination is in age,) is the ſervice of a bond-man. And yet a free-man may do the ſervice of him that is bond. And therefore a tenure in Villenage is two-fold, one where the perſon of the Tenant is bond, and the tenure ſervile; the other where the perſon is free, and the tenure ſervile. (c) Serva terra liberos de ſanguine exiſtentes, villanos facere non poteſt. And therefore it is ſaid, (d) Eſt enim ratio & regula generalis in iſtis duobus caſibus, quod liber homo nihil libertatis propter perſonam

(c) Hill. 29 E. 1. coram Rege, Ebor. in Theſaur.

(d) Bract. lib. 4. fol. 170.

frank home villein; mes un villein puit fair frank terr̃ deſte villein terr̃ a ſon Sr̃. Sicome lou un villein purchaſe terr̃ en Fee ſimple ou en Fee tail, le Sr̃ del villein poet enter en la terre, & ouſte le villein & ſes heires a touts jours: & puis le Seignior (ſil voloit) puit leſſer meſme la terre a le Villein, a tener en Villenage.

Villein may make free land to be Villein land to his Lord. As where a Villein purchaſeth land in Fee ſimple or in Fee tail, the Lord of the Villein may enter into the land, and ouſt the Villein and his heirs for ever: and after, the Lord (if he will) may let the ſame land to the Villein, to hold in Villenage.

perſonam ſuam liberam confert villenagio, nec liberum tenementum è contrario mutat ſtatum aut conditionem villani. **And again**, (e) Villenagium vel ſervitium nihil detrahit libertati, habita tamen diſtinctione utrum tales ſint villani, & tenuerunt in villano ſocagio de dominico Domini Regis. **And again**, (f) Tenementum non mutat ſtatum liberi, non magis quam ſervi; poterit enim liber homo tenere purum villenagium faciendo quicquid ad villanum pertinebit, & nihilominus liber erit, cum hoc faciat ratione villenagii, & non ratione perſonæ ſuæ; & ideo poterit quando voluerit villenagium deſerere, & liber diſcedere, niſi illaqueatus ſit per uxorem nativam ad hoc faciendum, ad quam ingreſſus fuit in villenagium, & quæ præſtare poterit impedimentum, &c. **And again**, (g) Purum villenagium eſt, à quo præſtatur ſervitium incertum & indeterminatum, ubi ſcire non poterit veſpere quale ſervitium fieri debet mane, *viz.* ubi quis facere tenetur quicquid ei præceptum fuerit. **And another ſaith to the ſame intent**, Ceux ne ſcavoient le veſpere de quoy ils ſerver' en la matin. (h) Fuerunt in Conqueſtu liberi homines qui liberè tenuerunt tenementa ſua per libera ſervitia, vel per liberas conſuetudines, & cum per potentiores ejecti eſſent, poſtmodum reverſi, receperunt eadem tenementa ſua tenenda in Villenagio, faciendo inde opera ſervilia, ſed certa & nominata, &c. & nihilominus liberi, quia licet faciunt opera ſervilia, cum non faciunt ea ratione perſonarum, ſed ratione tenementorum, &c.

(e) Idem lib. 1. cap. 6. Brit. c. 31. & 66. Flet. lib. 1. cap. 3.

(f) Bract. fol. 26. 43 E. 3. 5. acc.

(g) Bract. lib. 4. fol. 208. Brit. cap. 31.

(h) Bract. lib. 1. fol. 7.

How Villenage or ſervitude began, and for what cauſe, it is ſaid, (i) Ab homine & pro vitio introducta eſt ſervitus, ſed libertas à Deo hominis eſt indita naturæ; quare ipſa ab homine ſublata ſemper redire gliſcit, ut facit omne quod libertate naturali privatur. **And another ſaith,** (k) **That the condition of villeins from freedome unto Bondage of ancient time grew by conſtitutions of Nations.** (l) Fiunt etiam ſervi liberi homines captivitate de jure gentium, **and not by the Law of Nature, as from the time of Noah's Flood forward, in which time all things were common to all, and free to all men alike, who lived under the Law naturall: and by multiplication of people, and making proper and private thoſe things that were common, aroſe battels. And then it was ordained by conſtitution of Nations, That none ſhould kill another, but that he that was taken in battell ſhould remain bond to his taker for ever, and he to do with him, and all that ſhould come of him, his will and pleaſure, as with his beaſt, or any other Chattel, to give, or to ſell, or to kill. And after it was ordained for the cruelty of ſome Lords, that none ſhould kill them, and that the life and members of them, as well as of free men, were in the hands and protection of Kings, and that he that killed his Villein ſhould have the ſame judgement as if he had killed a freeman. Thereupon they were called** Servi, quia ſervabantur à Dominis & non occidebantur, & non à ſerviendo. **He is called** Nativus à naſcendo, quia plerumque natus eſt ſervus: **And he is called** Villanus, **for that he doth his Villein ſervice** in Villis.

(i) Forteſc. cap. 42.

(k) Brit. cap. 31.
(l) Bract. lib. 1. cap. 6. Flet. lib. 1. cap. 5. & cap. 5. Mir. cap. 2. ſect. 18.

Eſt autem libertas naturalis facultas ejus quod cuique facere libet, niſi quod de jure aut vi prohibetur. Servitus eſt conſtitutio de jure gentium qua quis Domino alieno contra naturam ſubjicitur. **And again,** (m) Et tout ſoit que touts creatures duiſſont eſte franks ſolonque le Ley de nature, per conſtitution nequidant, & fait de homes ſont autres creatures enſervies, ſicome eſt dit beaſts en Parkes, piſſons en ſervors, & oyſeaux en cages.

Bract. lib. 1. cap. 6. Brit. cap. 31. & ubi ſupra. Fleta lib. 1. cap. 2, & 3.
(m) Mirror cap. 2. ſect. 18.

(n) **This is aſſured, That bondage or ſervitude was firſt inflicted for diſhonouring of parents: for Cham the father of** Canaan (**of whom iſſued the Canaanites**) **ſeeing the nakednеſſe of his Father** Noah, **and ſhewing it in deriſion to his brethren, was therefore puniſhed in his ſon** Canaan **with bondage. And herewith agreeth the Divine,** Ante vini inventionem inconcuſſa libertas: non eſſet hodie ſervitus, ſi ebrietas non fuiſſet.

(n) Mirror ca. 2. ſect. 18. Gen. 9. verſ. 10, 11, &c.

Ambroſe.

¶ *Hors del Citie ou del Manor, &c.* **This is falſe printed, for the originall**

original is, Hors del ſcite del Mannor, and ſo would it be amended in the Impreſſions of the Book hereafter.

¶ *Et aſcuns frank homes teignont, &c.* This is apparent enough, eſpecially upon that which hath been ſaid. Mirror ca.2.ſect.18. acc.

¶ *Ou un villeine purchaſe terre en fee ſimple.* Yet the Villain may purchaſe ſome kind of Inheritances in fee ſimple, which the Lord of the Villain cannot have. As if a Villain purchaſe a common ſauns nomber, the Lord ſhall not have it, for the Lord may ſurcharge the ſame, which ſhould be a prejudice to the Tenre-tenant: and the ſame Law of a Corody in certaine granted to a villain, and ſuch like Inheritances. And therefore Littleton materially ſaid, Purchaſe terre: when the Villain hath an eſtate of any thing certain, the Lord ſhall have it, as a Rent granted to the Villain, Commons certain, Eſtovers certain, and ſuch like. Mirror cap.2. ſect.18. 22 Aſſ. p. 37.

(o) But that which lieth in action as a warranty made to the Villain, his heirs and aſſigns, the Lord ſhall not take advantage of by Voucher, becauſe it is in lieu of an action: neither ſhall the Lord take advantage of any Obligation or Covenant, or other thing in action made to the Villain, becauſe they lie in privity, and cannot be transferred to others. (o) Doct. & Stud. cap. 43.

(p) If a man be Leſſee of a Villain for life, for years, or at will, and the Villain purchaſeth lands in fee; if the Leſſee entreth into the lands, he ſhall hold the lands as a perquiſite to him and his heirs for ever. But if a Biſhop have a Villain in the right of his Biſhoprick, and he purchaſeth lands, and the Biſhop entreth, the Biſhop ſhall have this perquiſite to him and his ſucceſſors, and not to him and his heirs; for the Law reſpecteth the quality, and not the quantity, of his eſtate. So if Executors have a Villain for years, and the Villain purchaſeth lands in fee, and the Executors enter, they ſhall have a fee ſimple, but it ſhall be aſſets. (p) L. 5 E.4.61.18 E.3. 29. 21 H.6.37. Broo. tit. Vill. 70.

¶ *Fee tail.* By this it is apparent, that if lands be given to a Villain and to the heirs of his body, the Lord may enter, and put out the Villain and the heirs of his body; for, Quicquid acquiritur ſervo, acquiritur Domino. And in this caſe the Lord gains a fee ſimple determinable upon the dying of the Villain without heir of his body, and the abſolute fee ſimple remaineth ſtill in the Donor. And if the Lord enter, and after infranchiſe the Donee, and after the Donee hath iſſue; yet that iſſue ſhall never have remedy, either by Formedon or entry, to recover this land, by force of the Statute of Donis Conditionalibus, for that Statute giveth remedy to the iſſues of the Donee that have capacity and power to take and retain ſuch a gift. And the title of the Lord remains as it did at the Common Law, for that Statute reſtraineth acts done only by the Tenant in tail. And ſo it is, if lands be given to an Alien, and to the heirs of his body, upon office found, the land is ſeiſed for the King, afterwards the King makes the Alien a Denizen, who hath iſſue and dieth; the King ſhall detain the Land againſt the iſſue. 15 E.4.9.b. Pl.Com.353. in Wallinghams Caſe.

Sect. 173.

¶ ET nota, ſi feoffment ſoit fait a certein perſon ou perſons en fee al uſe dun villeine, ou ſi un villeine ove auters perſons ſoient enfeoffes al uſe le villeine, quel eſtate que le villeine ad en le uſe, en fee tail, pur terme de vie ou dans, l' Seignior del villeine poit entrer en touts ceux terres & tenements, ſicome l' villeine uſt eſte ſole ſeiſie del demeſne. Et ceſt per Leſtatute de Anno 19 H.7. cap. 15.

AND note, if a feoffment be made to a certain perſon or perſon in fee to the uſe of a Villein, or if a Villein with other perſons be infeoffed to the uſe of the Villein, what eſtate ſoever that the Villein hath in the uſe, in fee tail, for term of life or years, the Lord of the Villein may enter into all thoſe lands and tenements, as if the Villein had been ſole ſeiſed of the Demeſne. And this is given by the Statute of *Anno* 19 *H.7. cap.* 15.

¶ This is an addition to Littleton, and the Statute of 19 H. 7. cap. 15. therein mentioned, for the cauſe that hath been aforeſaid, hath loſt his force.

Sect. 174.

¶ *A Paier un fine pur le mariage, &c.*

(q) **And this villein and ſervile Tenure is called in old books** Marchetum, or Merchet. Marchetum verò pro filia dare non competit libero homini inter alia propter liberi ſanguinis privilegium, &c. **And this is true** de communi jure: ſed modus & conventio vincunt legem. **And, as** Littleton **here ſaith, it is the folly of ſuch a Freeman to take ſuch Mannors, Lands, or Tenements, to hold of the Lord by ſuch bondage. And yet this doth not make ſuch a Freeman a Villein.** (r) Quia hujuſmodi præſtationes fiunt ratione tenementi, & non ratione perſonæ in dimatione comprehenſæ & reſervat'; non enim unum & idem eſt, ſed longe aliud, tenere libere, & per liberum ſervitium, &c. **For the ſignification of this word,** vide Sect. 194. & 74. & 441.

(q) 15 E.3. tit. Aid 33. Bracton lib.2. fo. 26. Mirror cap.2. Sect.18.

See more of this after in this Chapter, Sect.194.

(r) Fleta lib.3. cap.13. Mirr. cap.2. ſect. 18.

¶ *Mes ſi aſcun franke home voile prender aſcun fres ou tenements a tener de ſon Sñr p tiel villeine ſervice, s. a payer un fine a luy pur le mariage ď ſes fits ou files, doncq̃ il paiera tiel fine pur le mariage: & nient obſtant que il eſt le follie ď tiel franke home de prender en tiel forñ terres ou tenements a tener de le ſeignior per tiel bondage, uncore ceo ne fait le franke home villeine.*

BUT if a Freeman will take any Lands or Tenements to hold of his Lord by ſuch villeine ſervice, *viz.* to pay a Fine to him for the marriage of his ſons or daughters, then he ſhall pay ſuch Fine for the marriage: yet notwithſtanding though it be the folly of ſuch Freeman to take in ſuch form Lands or Tenements to hold of the Lord by ſuch bondage, yet this maketh not the Freeman a villein.

Sect. 175.

¶ *Cheſcun villeine ou eſt villein per title de preſcription, &c.*

Lib. Rub.cap.76,77. Bracton lib.1. cap.6. Bract. fol. 77.

Every Villein is either by preſcription or confeſſion: Servi aut naſcuntur, aut fiunt. **By preſcription, either regardant to a Mannor, &c. or in groſs. In groſs, either by preſcription, or by granting away a villein that is regardant, or by confeſſion.** (ſ) Fit etiam ſervus liber homo per confeſſionem in curia Regis fact'.

(ſ) Bract. lib.1.cap.6. Fleta lib.1. cap.3. 8 Aſſ. p. 13. 11 Aſſ.12. 24 Aſſ.1. 73 Aſſ.1. 17 E.3.78,79. 27 E.3.89. 18 E.4.25. 27 H.8.7.b. Leſtatute de 17 E.3. c. 17.

¶ *Ausi cheſcun villein ou eſt un villein p title de preſcription, ceſtaſcavoir, q̃ il a ſes auncеſtors ont eſte villeins ď temps dont memorie ne curt; ou il eſt villein per ſon confeſſion demeſme en court de Record.*

ALſo every villein is either a villein by title of Preſcription, to wit, that he and his Auncеſtors have been Villeins time out of mind of man; or he is a Villein by his own confeſſion in a Court of Record.

¶ *En Court de Record.* **Record is derived of the Latine word Recordor, that is, to keep in mind, as the Poet ſaith,** Si rite audita recordor. **And therefore a Record or Inrolment is a memorial or monument of ſo high a nature,** (t) **as it importeth in it ſelf ſuch an abſolute verity, as if it be pleaded that there is no ſuch Record, it ſhall not receive any trial by witneſſe, jury, or otherwiſe, but only by it ſelf.** (u) **And every Court of Record is the Kings Court, albeit another may have the profit; wherein if the Judges do erre, a writ of Error doth lie.** (x) **But the County Court, the Hundred Court, the Court Baron, and ſuch like, are no Courts of Record, and therefore the proceedings therein may be denied, and tried by Jury; and upon their judgments a writ of Error lieth not, but a writ of falſe judgment,**

(t) 17 E.3.23. 11 H.4. 26. 37 H 6.21. Dier Mich. 7 & 8 Eliz.242. Pl. Com. 79, &c.

(u) Glanv. lib.9. cap. 8. Bracton lib.3. fol.156. Britton fol. 121.

(x) Lib.6. fo.11, & 12. in Jentlemans Caſe.

ment, for that they are no Courts of Record, becauſe they cannot hold plea of debt or treſpaſs, if the debt or damages do amount to forty ſhillings, or of any treſpaſs Vi & armis.

Monumenta, quæ nos records vocamus, ſunt veritatis & veruſtatis veſtigia.

Sect. 176.

¶ MEs ſi frank home ad diuers iſſues, & puis il conſeſſe luy meſme deſtre villein a un auter en Court de Record, uncore les iſſues que il avera devant le confeſſ. ſont franks; mes les iſſues que il avera apres le confeſſion ſerront villeins.

BUT if a Freeman hath divers iſſues, and afterwards he confeſſeth himſelf to be a villain to another in a Court of Record, yet thoſe iſſues which he hath before the confeſſion are free; but the iſſues which he ſhall have after the confeſſion ſhall be villains.

This is ſo evident as it needeth no explication.

Sect. 177.

¶ ITem ſi le villein purchaſe terre, & alien la terre a un auter devant que le Seignior enter, donques le Seignior ne poit enter, car il ſerra adjudge ſon follie, q̃ il nentra pas quant la terre fuit en le maine le villeine. Et iſſint eſt des biens: ſi le villein achate biens, & eux vend ou done a un auter devant que le Seignior ſeiſiſt les biens, adonques le Seignior ne poit eux ſeiſer: mes ſi le Seignior devant actũ tiel vender ou done vient deins la ville la ou tielx biens ſont, & la obertment enter les biennes claima les biens, & ſeiſiſt parcel

ALſo if a Villain purchaſe Land, and alien the Land to another before that the Lord enter, then the Lord cannot enter, for it ſhall be adjudged his folly, that he did not enter when the Land was in the hands of the Villain. And ſo it is of goods: If the Villain buy goods, and ſell or give them to another before the Lord ſeiſeth them, then the Lord may not ſeiſe the ſame: but if the Lord before any ſuch ſale or gift cometh into the Town where ſuch goods be, and there openly amongſt the neighbours claims the goods, and ſeizes part of the goods in the name of Seiſin

¶ In this caſe, before the Lord doth enter, he hath neither jus in re nec jus ad rem, but only a poſſibility of an eſtate, which eſtate he muſt gain by his entry: and therefore if the villein doth by way of prævention alien before the Lord doth enter, the Lord is barred of the poſſibility which he had to the land for ever. (a) Si autem ſervus vendiderit feodum quod ſibi & hæredibus perquiſiverit antequam Dominus ſeiſinam inde ceperit, valet donatio, & Dominus ſibi ipſi imputet, quod tantum expectavit. But (b) if the Villain of the King purchaſeth land, and alieneth before the King (upon an office found for him) doth enter, yet the King after office found ſhall have the land, Quia nullum tempus occurrit Regi, as Littleton himſelf ſaith in the next Section. And yet after office found, the King ſhall not have the mean profits, becauſe the Title is by the ſeiſure.

(a) Fleta lib. 3. cap. 13. Britton fol. 98. a. 19 E. 2. Dower 171.

(b) 35 E. 3. tit. villen. 22. 9 H. 6. 21. per Babbington. 12 H. 7. 12.

¶ *Purchaſe terre.* The like Law is of Reverſions, Remainders, Rents, Commons certain, and ſuch like certain Inheritances, wherein the Villain hath

hath any eſtate or intereſt. If the Villain purchaſe Land either in Fee ſimple, Fee tail, or for life, if the Villain doth alien before the Lord doth enter, he doth prevent the Lord. But yet the iſſue of the Villain ſhall recover the land intailed in a Formedon, and then the Lord may enter.

des biens en noſme de ſeiſin de touts les biens que le villein ad, ou aver poit, &c. ceo eſt dit bon ſeiſin en ley, & le occupation que le villein ad apres tiel claim en les biens ſerra pris en le droit le Seignior.

of all the goods which the Villain hath, or may have, &c. this is a good Seiſin in Law, and the occupation which the Villain hath after ſuch claim in the goods ſhall be taken in the right of the Lord.

¶ *Alien la terre.* Alien cometh of the Verb Alienare, id eſt, alienum facere, vel ex noſtro dominio in alienum transferre, ſive rem aliquam in dominium alterius transferre. If a Freeman hath iſſue, and afterward by confeſſion becometh bond, and purchaſeth lands in Fee, and before the Lord enter he dieth ſeiſed, and the Land deſcends to his iſſue which is free; in this caſe the Lord ſhall not enter upon the heir, and yet this is a deſcent, and no alienation. The like Law it is if the land ſo purchaſed by the Villain doth eſcheat to the Lord of the Fee before any entry made by the Lord of the Villain: ſo as the act of the Law, that is, the deſcent or eſcheat, may as well prevent the Lord of his entry, as the act of the party by alienation.

If a Villain be diſſeiſed before the Lord doth enter, the Lord may enter into the Land in the name of the Villain, and thereby gain the Inheritance of the Land: but if there be a deſcent caſt, ſo as the entry of the Villain be taken away, then the Villain muſt recontinue the eſtate of the Land by judgment and execution before the Lord of the Villain can enter. And this word (alien) doth not only extend to alienations of Land in Deed, but alſo to alienations in Law; as if the Villain purchaſe Land and dieth without heir, and the Land eſcheat, or if there be a Recovery againſt the Villain in a Ceſſavit, or the like.

¶ *Et iſſint eſt des biens, &c.* Biens, bona, includes all Chattels, as well real as perſonal. Chattels is a French word, and ſignifies Goods, which by a word of Art we call Catalls. Now goods or chatteis are either perſonal, or real. Perſonal, as horſe and other beaſts, houſhold-ſtuff, bows, weapons, and ſuch like; called perſonal, becauſe for the moſt part they belong to the perſon of a man, or elſe for that they are to be recovered by perſonal actions. Real, becauſe they concern the Reality, as tearms for years of Lands or Tenements, Wardſhips, the intereſt of Tenant by Statute Staple, by Statute Merchant, by Elegit, and ſuch like.

Bona dividuntur in mobilia & immobilia: mobilia rurſum dividuntur in ea quæ ſe movent, & quæ ab aliis moventur. But by the Common Law no eſtate of inheritance or Freehold is comprehended under theſe words bona or catalla. And it is to be obſerved, that as the title of the Lord to his Villains lands beginneth by his entry, ſo his title to the goods beginneth by the ſeiſure of them. And here again it is to be obſerved, that where our Author in this branch concerning goods uſeth theſe words (ſell or give,) that the ſame extendeth as well to gifts in Law as gifts in Deed. And therefore if a Neife hath goods, and taketh Baron, by this gift in Law, by force of the marriage, the Lord is barred. And ſo it is if a Villain make his Executors, and dieth, by this gift in Law the Lord is barred, as ſhall be ſaid hereafter.

3 H.4.15. 46 E.3. barre 217. Doct. & Stud. ca.43. fol. 139. 22 E.3.6. Baldwin Frevils Caſe.

¶ *Et claime les biens, & ſeiſiſt parcel des biens.* For a claim only of the goods of the Villain is not ſufficient in Law, but he muſt ſeiſe ſome part in the name of all the reſidue, as here it appeareth, or that the goods be within the view of the Lord; for the claim and his view amount to a ſeiſure: as the claim of a Ward being preſent by word is a ſufficient ſeiſure, albeit the Gardian layeth no hands on him. As hereafter Sect. 321. And ſo note a diverſity between a claim of Lands or Tenements, and goods. (c) In an action of treſpaſs or detinue brought by the Villain, a releaſe made to the Defendant by the Lord is a good bar, for that amounts to a ſeiſure and grant. If the Villain doth buy goods, and make his Executors, and dieth before the Lord doth ſeiſe them, the Executors ſhall detain them againſt the Lord of the Villain.

(c) 18 H.6.23.b. per Aſtcough. 3 H.4.16. 46 E.3. bar.217.

¶ *Ad, ou aver poet, &c.* Here (&c.) doth imply an excellent point of learning, for that ſuch a claim doth not only veſt the goods which the Villain then hath, but alſo which he after that ſhall acquire and get. But otherwiſe it is of lands of Freehold or Inheritance, for there ſuch a general entry or claim extends only to the lands the Villain hath at that time,

time, and not to any other which he ſhall purchaſe after; as by our Author in this Section may juſtly be collected.

Sect. 178.

¶ Mes ſi le Roy ad un villein q̃ purchaſe terre, & alien devant que le Roy entra, uncore le Roy poit enter, en q̃ maines que la terre devienդa. Ou ſi le Villein achata biẽs, & eux vendiſt devant que le Roy ſeiſiſt les biens, uncore le Roy poit ſeiſer les biens en que maines que les biens ſont. Quia nullum tempus occurrit Regi.

But if the King hath a Villein who purchaſes Land, and aliens it before the King enter, yet the King may enter, into whoſe hands ſoever the land ſhall come. Or if the Villein buyeth goods, and ſell them before that the King ſeizeth them, yet the King may ſeize theſe goods in whoſe hands ſoever they be. Becauſe *nullum tempus occurrit Regi.*

¶ *Si le Roy ad Villein, &c.* This is evident upon that which hath bẽn ſaid before. Vide ſect. 125. Vid. Stamford prær. f. 32. a.

¶ *Ou ſi tiel Villeine achata biens &c.* If the Kings Villein acquire any Goods or Chattels, the property of them is in the King before any ſeiſure or office: and it is well ſaid of an ancient Author, (d) Al Roy quant al droit de la Corone ou a frank eſtate ne poet nul temps occurre: and another (e) ſpeaking in the perſon of the King ſaith, Nul temps neſt limit quant a mes droits. 35 E. 3. tit. Villenage 22. (d) Mirror cap. 3. (e) Britton fol. 88. Bract. l. 1. qua res Domini poſſint.

Sect. 179.

¶ Item ſi home leſſa certeine terre a un auter pur term de vie, ſavant le reverſion a luy, & un villeine purchaſe del leſſor le reverſion: en ceſt cas il ſemble q̃ le Seignior del villein poit maintenãt veſt a la terre, & claime le reverſion, come le Seignior le dit villein, & per cel claime le reverſion eſt maintenant en luy. Car en auter form il ne poit venir a le reverſion, car il ne poit enter ſur le tenant a term de vie. Et ſil doit demurrer tanque apres le mort le tenant a term

Alſo if a man let certain land to another for term of life, ſaving to himſelf the reverſion, and a villein purchaſe of the leſſor the reverſion: in this caſe it ſeemeth that the Lord of the Villein may preſently come to the land, and claim the reverſion, as the Lord of the ſaid villein, and by this claim the reverſion is forthwith in him. For in other form or manner he cannot come to the reverſion, for he cannot enter upon the tenant for life. And if he ſhould ſtay until after the death of the Tenant for

¶ *Poit maintenant venir a la terre.* For he cannot claim the reverſion but upon the Land, and he by his coming upon the land for that purpoſe is no treſpaſſor, becauſe the Law giveth him power to claim the reverſion, leſt he ſhould be prevented, and claim he cannot unleſs he cometh to the Land. So likewiſe if the Villein purchaſe a Seigniory, Rent, Common, or any other Freehold or Inheritance out of any Lands or Tenements of another, the

the Lord may lawfully come to the land to make his claim to the Seigniory, rent, or other profit out of the land. But if the villein purchase a Seigniory, or a Rent, Common, or other Inheritance, issuing

de vie, donques per cas il viendra trope tarde. Car peradventure le villeine voile granter ou alien le reversion a un auter en la vie le tenant a terme de vie, &c.

life, then perchance he should come too late. For peradventure the villein will grant or alien the reversion to another in the life of the Tenant for life, &c.

Vide 41 E. 3. tit. Audita querela 18.
12 H. 4. tit. Execution.
28 F.N.B. 104.
1 H. 7. 15. b.

out of the Land of the Lord himself, it is said that the Seigniory, Rent, Common, or such other Inheritance, is extinguished in the Lords possession without any claim.

¶ *Grant.* Here must be intended an Attornment: for after the grant and before Attornment the Lord may not claim the Reversion.

¶ *En la vie del tenant pur vie, &c.* Here by (&c.) is included Tenant in Taile, Tenant pur auter vie, Tenant by Statute Merchant, Staple, Elegit, and for years; for during all these estates the Lord may claim the Reversion, as well as in case of the Tenant for life.

Sect. 180.

¶ *Advowson.* Advocatio, so called, because the Right of presenting to the Church was first gained by such as were Founders, Benefactors, or Maintainers of the Church: viz. ratione fundationis, as where the Ancestor was founder of the Church; or ratione donationis, where he endowed the Church; or ratione fundi, as where he gave the soil whereupon the Church was built: and therefore they were called Advocati. They were also called Patroni, and thereupon the Advowson is called Jus Patronatus. And in one word, Advowson of a Church is the Right of presentation or collation to the Church. Advocatus est ad quem pertinet Jus advocationis alicujus Ecclesiæ, ut ad Ecclesiam nomine proprio, non alieno, possit præsentare. Every Church is either presentative, collative, donative, or elective. Vide Sect 645. 648.

¶ EN meisme le maner est, lou un villeine purchase un Advowson dun Esgl' plein dun incumbent, le Sir del villeine poit vener al dit Esglise, & claime le dit advowson, & per cel claime ladvowson est en luy. Car il doit attendre tanq; apres le mort lincumbent, & adonque a presenter son clerke a le dit Esglise, donque en le meane temps le villeine poit aliener le advowson, & issint ouste le Seignior de son presentment.

IN the same manner it is, where a villein purchases an advowson of a Church full of an incumbent, the Lord of the villein may come to the said Church, and claim the said Advowson, and by this claim the Advowson is in him. For if he will attend till after the death of the Incumbent, and then to present his Clerk to the said Church, then in the mean time the Villein may alien the Advowson, and so oust the Lord of his presentment.

13 H. 14. b.

Fleta lib. 5. cap. 14.

¶ *Plein dun Incumbent.* If the Church be presentative, the Church is full by Admission and Institution against any common person; but against the King it is not full untill Induction.

24 E. 3. 30. 25 E. 3. 47.
38 E. 3. 9. 44 E. 3. 3.
9 H. 6. 31. 22 H. 6. 27.
21 E. 4. 34. b. Vide Sect. 648.

¶ *Incumbent* cometh of the Verb Incumbo, that is, to be diligently resident, id est, obnixè operam dare: and when it is written Encumbent, it is falsely written, for it ought to be Incumbent, as Littleton hath it here. And therefore the Law doth intend him to be resident on his Benefice.

20 H. 6. 7.

¶ *Le*

¶ *Le Seignior del villein poit vener al Egliſe, & claime le dit advowſon.* Note, albeit the Advowſon be a thing incorporeal, and not viſible, yet becauſe the principall duty of the preſentee of the Patron is to be done in the Church, the claime of the Lord of the Villein muſt be made there, and by that claim the inheritance of the Advowſon ſhall be veſted in the Lord: for every claim or demand to devеſt any eſtate or intereſt muſt be made in that place which is moſt apt for that purpoſe.

¶ *Apres la mort del Incumbent.* Note, a Church preſentative may become void five manner of ways. viz. 1. By death, whereof Littleton here ſpeaketh. 2. By creation. 3. By reſignation. 4. By deprivation. 5. By ceſſion, as by taking a Benefice incompatible. Doct. & Stud. lib.2. ca.31. 5 E.3.180. 10 E.3.482. 25 E.3.49. 9 E.3.462. 11 H.4.37.59. & 76.

¶ *Et adonques a preſenter ſon Clerke al dit Egliſe, &c.* A preſentation is derived à præſentando, quia præſentare nihil aliud eſt quam præſto dare, ſeu offerre. And Littleton here briefly expreſſeth the effect of a Preſentation; for it is the act of the Patron offering his Clerke to the Biſhop of that Dioceſs to be inſtituted to ſuch a Church in theſe or the like words directed to the Biſhop, Præſento vobis A. B. Clericum meum ad Eccleſiam de Dale, &c. This may be done as well by word as by writing; and if it be by writing it is no Deed; for the preſentation is of the Clerk, and the direction to the Biſhop, ſo as this writing is in nature of a Letter to the Biſhop: and this is the reaſon that the King himſelf may preſent by word, as elſewhere is ſaid. A Villein at this day purchaſeth an Advowſon in fee, the Church becomes void, the Lord for a hundred pound given by A. B. Clerk preſents him to the Church, and his Clerk is admitted, inſtituted and inducted; yet this gaineth not the Advowſon to the Lord. (d) And ſo it is in that caſe, if any on the behalf of A. B. had given or contracted with the Lord in conſideration of any valuable thing to preſent A. B. to the ſaid Church, albeit it had been without the conſent or knowledge of A. B. yet it ſhould not have veſted the Advowſon in the Lord. But this was not Law when Littleton wrote. (e) But now by the Statute of 31 Eliz. the preſentation, admiſſion, inſtitution and induction, in both the ſaid caſes and in the like, are made void, where before the ſaid Statute they were but voidable by deprivation. And if a man preſent by uſurpation to a Bereſice by reaſon of any corrupt contract, agreement, &c. that Preſentation, and the inſtitution and induction thereupon, are void, for that act extends to all Patrons as well by wrong as by right; but where any preſents by uſurpation, the rightfull Patron and not the King ſhall preſent, for otherwiſe every rightfull Patron may loſe his preſentation. And ſuch an Incumbent that cometh in by reaſon of any ſuch corrupt agreement is ſo abſolutely diſabled for ever after to be preſented to that Church, as the King himſelf, to whom the Law giveth the Title of Preſentation in that caſe, cannot preſent him again to that Church; for the Act being made for ſuppreſſion of Simony and ſuch corrupt agreements, ſo binds the King in that caſe, as he cannot preſent him that the Law hath diſabled; for the words of the Act be, Shall thereupon and from thenceforth be adjudged a diſabled perſon in Law to have or enjoy the ſame Benefice. (f) And the party being diſabled by the Act of Parliament, which (being an abſolute and direct Law) cannot be diſpenſed withall by any Grant, &c. with a Non obſtante, as it may be when any thing is prohibited ſub modo, as upon a penalty given to the King. And the ſaid Act doth not only extend to Benefices with Cure, but to Dignities, Prebends, and all other Eccleſiaſtical livings. (d) Adjudg. in Communi Banco Mich. 41 & 42 Eliz. inter Baker & Rogers. (e) Adjudged in the Kings Bench Mich.13 Jac. in a Quar. imp. brought by the King againſt the Biſhop of Norwich, Thomas Cole, and Rob. Secker Clerk, for the Vicarage of Havereli in Suſſ. (f) Pl. Com. 502. 27 H.8. 2 H.7.6. 11 H.7.11. 13 H.7.8. b. 11 H.4.76. 5 E.3.29.F.N.B. 211. E.

¶ *Clerke.* Clericus is twofold. Eccleſiaſticus, (which Littleton here intendeth) and he is either ſecular, or regular; ſo called, becauſe he is Servus & hæreditas Domini: and Laicus; and in this ſenſe is ſignified a Pen-man, who getteth his living in ſome Court or otherwiſe by the uſe of his pen. 4 H. 4. cap. 12.

Note, if the Church becometh void, albeit the preſent avoidance be not by Law grantable over, yet may the Lord of the Villein preſent in his own name, and thereby gain the Inheritance of the Advowſon to him and his heirs: for albeit it be not grantable over, yet it is not meerly a Choſe in action; (g) for if a Feme covert be ſeiſed of an Advowſon, and the Church becometh void, and the wife dieth, the husband ſhall preſent to the Advowſon: (h) but otherwiſe it is of a bond made to the wife, becauſe that is meerly in action. (g) 14 H.4.12. 38 E.3. 35. 13 E.3. Quar. imp.57. (h) 43 E.3.10. 39 E.3.5. 4 H. 6. 5.

Sect. 181.

¶ Item il y ad villeine regard, & villeine en gros.

Alſo there is a villeine regardant, and a villeine in groſs.

¶ *Villein regardant.* He is called regardant to the Manour, becauſe he hath the charge 8 H. 7. 4.

charge to do all baſe or vileinous ſervices within the ſame, and to guard and keep the ſame from all filthy or loathſome things that might annoy it: and his ſervice is not certain, but he muſt have regard to that which is commanded unto him. And thereupon he is called Regardant: A quo præſtandum ſervitium incertum & indeterminatum, ubi ſcire non poterit veſpere quale ſervitium fieri debet mane, viz. ubi quis facere tenetur quicquid ei præceptum fuerit, as before hath been obſerved. And Littleton ſaith hereafter, that no other thing is ſaid to be regardant, but only a Villeine: (i) Yet in old Books it was ſometimes applied to Services.

Bract. lib. 2. fol. 26. Mir. cap. 2. Sect. 18.

Vide ſect. 184.

(i) 20 E. 3. tit. Iſſue 30.

¶ *In groſſe* is that which belongs to the perſon of the Lord, and belongeth not to any Mannor, Lands, &c.

Villeine regardant eſt, ſicome home eſt ſeiſie dun Mannor a que un villeine eſt regardant, & celuy que eſt ſeiſie del dit mannor, ou ceux q̄ eſtat il ad en meſm̄ le Mannor, ount eſte ſeiſies de le dit villein & de ſes Auncеſtors come villeins & niefs regardants a meſme le mannor de temps dont memorie ne curt. Et villeine en groſſe eſt, lou un home ſeiſie dun Mannor a que un villeine eſt regardant, & il graunt meſm̄ le villein q̄ ſon fait a un autr, donques il eſt villein en groſſe, & nemy regardant.

A villein regardant is, as if a man be ſeiſed of a Mannor to which a villein is regardant, and he which is ſeiſed of the ſaid Mannor, or they whoſe eſtate he hath in the ſame Mannor, have been ſeiſed of the villein and of his Anceſtors as villeins and niefs regardant to the ſame Mannor time out of memory of man. And villein in groſſe is, where a man is ſeiſed of a Mannor whereunto a Villein is regardant, and granteth the ſame villein by his Deed to another, then he is a villein in groſs, and not regardant.

Sect. 182.

¶ This needeth no explanation, but to adde the ſaying of an ancient Author, Servage de home eſt ſubjection iſſuant de cy grand antiquitie, que nul franke cep poet eſtre trove per humaine remembrance.

Mir. cap. 2. ſect. 18.

¶ Item ſi un home & ſes Anceſtors que h̄e il eſt ount eſte ſeiſies dun villein & des ſes anceſtors come des Villeins en groſſe de temps dont memorie ne curt, tiels ſont Villeines en groſſe.

Alſo if a man and his Auncеſtors whoſe heir he is have been ſeiſed of a Villein and of his Auncеſtors as of Villeins in Groſſe time out of memorie of man, theſe are Villeins in Groſſe.

Sect. 183.

¶ Ou *fine*. In Latine, Finis. (l) Ideo dicitur finalis concordia, quia imponit finem litibus, & eſt exceptio peremptoria. (m) Finis eſt amicabilis compoſitio & finalis concordia ex conſenſu & licentia

Vide ſect. 441. 194. 174. 74.
(l) Bract. l. 5. tract. 5. cap. 28.

(m) Glanv. lib. cap. 1.

¶ Et hic nota, que tiels choſes q̄ ne poient eſte grants ne aliens ſans fait ou fine, home que voile aver tiels choſes per

And here note, that ſuch things which cannot be granted nor aliened without Deed or Fine, a man which will have

pre-

prescription ne poet auterment prescriber forsque en luy & en ses Auncestors que heir il est, & nemy per ceux parols, En luy & en ceux que estate il ad; p ceo que il ne poet aver lour estate sans fait ou auter escripture, le quel covient deste monstre a le court, si il voile aver ascun advantage de ceo. Et pur ceo que le grant & alienation dun villein en gros ne gist sans fait ou auc escriptuc, hõe ne poit prescriber en un villein en gros sans mõstrans descripture, si non en soy meisme que claim le villeine, & en ses Ancestors que heire il est. Mes de tiels choses que sont regardants ou appendants a un Mannor, ou a auters terres & Tenements, home poet prescriber, que il & ceux que estate il ad, queux fueront seisies de le Mannor, ou de tiels Terres & Tenements, &c. ont este seisies de tiels choses, come regardants ou appendants a le Mannor, ou a tiels tres & tenements, de temps dont memorie, &c. Et la cause est, pur ceo que tiel Mannor

such things by prescription cannot otherwise prescribe but in him and in his Ancestors whose heir he is, and not by these words, In him and them whose estate he hath; for that he cannot have their estate without Deed or other Writing, the which ought to be shewed to the Court, if he will take any advantage of it. And because the grant and alienation of a Villein in gross lieth not without Deed or other Writing, a man cannot prescribe in a Villein in gross without shewing forth a Writing, but in himself which claims the Villein, and in his Auncestors whose Heir he is. But of such things which are regardant or appending to a Mannor, or to other Lands and Tenements, a man may prescribe, that he and they whose Estate he hath, who were seised of the Mannor, or of such Lands and Tenements, &c. have been seised of those things, as regardant or appendant to the Mannor, or to such lands & tenements, time out of mind of man. And the

Domini Regis, vel ejus Justiciariorum. (n) Talis concordia finalis dicitur, eo quod finem imponit negotio, adeo ut neutra pars litigant' ab eo de cætero poterit recedere. Of the several parts of a Fine, and many incidents to the same, you shall read in my Reports.

(n) Lib. 9. cap. 3. Stat. de Modo levandi Fines. Pl. Com. 357.

Lib. 5. fol. 38. Teyes Case.

¶ *Que estate, &c.* Quorum statum, as much as to say, Whose estate he hath. Here Littleton declareth one excellent rule; (o) That a man cannot prescribe in any thing by a Que estate, that lieth in grant, and cannot passe without Deed or Fine, but in him and his Ancestors he may, because he comes in by descent without any conveyance. Neither can a man plead a Que estate in himself of any thing that cannot pass without Deed; (p) but in another he may: as in bar of an avowry, the Plaintiff may plead a Que estate in the Seigniory in the avowant. But Littletons words are to be observed, (Home que voile aver tiels choses per prescription.) Therefore (q) when a thing that lieth in grant is but a conveyance to the thing claimed by prescription, there a Que estate may be alledged of a thing that lieth in grant; as a man may prescribe that he and his Ancestors, and all those whose estate he hath in an Hundred, have time out of mind, &c. had a Lect, &c. This is good, &c.

(o) 22 Ass. 53. 23 Ass. 6. 12 H. 7. 16. 18.

(p) 39 H. 6. 8. 18 E. 4. 23.

(q) 11 H. 4. 89. 19 R. 2. Action sur le case 51. 13 E. 3. Br. 674.

(r) Regularly, the Plaintiff shall not entitle him by a Que estate, but he must shew how he came by it; but after Avowry made, the Plaintiff shall plead a Que estate, because he is now become as a Defendant.

(r) 9 E. 4. 3. b. 29 Ass. 19. 2 H. 6. 10. 48 E. 3. tit. 33. 3 H. 28.

(s) A man may plead a Que estate of a tenure in tail, or of an estate for life, so as he aberreth the life of them; but he cannot plead a Que estate of a lease for years, or at will.

(s) 41 Ass. 2. 40 Ass. 28. 2 H. 4. 20. 15 E. 4. 1. 5 H. 7. 39. 18 E. 4. 10. 7 E. 6. tit. Que estate, Br. 31. 27 H. 6. 3. 7 Eliz. Dier 238.

(t) A Disseisor, Abator, Intruder, Recoveror, or any other that cometh in the post,

(t) 22 H. 6. 34. 6 E. 4. 12. 31 H. 8. Que estate, Br. 48. 39 H. 6. 14. 9 H. 6. Estop. 25.

poſt, ſhall plead a Que eſtate.

(u) A Que eſtate muſt be alledged in the Tenant or Defendant himſelf, and not in one in the mean conveyance from whom he claimeth, and yet ſome bookes be to the contrary.

ou terres & tenements poient paſſer per alienation ſans fait, &c.

reaſon is, for that ſuch Mannor or Lands and Tenements may paſs by alienation without deed, &c.

(u) 11 H.4.81. 27 H.6.32. 9 E.4.3. 2 E.6. tit. Que eſtate 8. 1 E.6. Que eſtate, Br. 49.

¶ *Le quel covient deſte monſtre al Court.* The reaſon wherefore a Deed that is pleaded ought to be ſhewed to the Court is, becauſe every deed muſt prove it ſelf to have ſufficient words in Law, whereof the Court muſt adjudge, and alſo is to be proved by others, as by witneſſes, or other proof, if the Deed be denied, which is matter of fact.

¶ *Per alienation ſauns fait, &c.* Here by (&c.) is implied, that whatſoever paſſeth by Livery of ſeiſin either in Deed or in Law may paſſe without Deed: and not only the Rents and Services, parcel of the Mannor, ſhall with the demeans, as the more principal and worthy, paſſe by Livery without Deed, but all things regardant, appendant, and appurtenant to the Mannor, as incidents or adjuncts to the ſame, ſhall together with the Mannor paſs without Deed: all which, as here it appeareth, and elſewhere is ſaid, ſhall paſſe without ſaying, Cum pertinentiis.

Sect. 184.

¶ *Regardant.* Vide Sect. 181.

¶ *Appendants.* Appendant is any Inheritance belonging to another that is ſuperiour or more worthy. In Law it is called Pertinens, quaſi invicem tenens, holding one another; a word indifferent both to things appendant, and things appurtenant; the quality and nature of the things do make the difference: but regardant (as our Author ſaith) is only applied to a Villain. (*) Appendants are ever by preſcription, but appurtenants may be created in ſome caſes at this day. As if a man at this day grant to a man and his heirs Common in ſuch a Wood for his beaſts levant or couchant upon his Mannor, or if he grant to another Common of Eſtovers or Turbary in Fee ſimple, to be burnt or ſpent within his Mannor, by theſe grants theſe Commons are appurtenant to the Mannor, and ſhall paſſe by the grant thereof. In the Civil Law it is called Adjunctum.

¶ ET eſt aſcavoir, que nul choſe eſt noſme regardant a un Mannor, &c. forſque villeine: mes certeine auters choſes, come advowſon & common d pasture, &c. ſont noſmes appendants al Mannor, ou al terres & tenements, &c.

AND it is to be underſtood, that nothing is named regardant to a Mannor, &c. but a villein: but certain other things, as an advowſon and common of Paſture, &c. are named appendant to the Mannor, or to the Lands and Tenements, &c.

Vide Sect. 1.
(*) 5 Aſſ. 9. 8 H.7.4,5. 28 H.8. Dier 30. b. Pl. Com. 381. F.N.B. fol. 181.

(x) 43 Aſſ. pl. 10. 43 E.3.22.

(x) If A. be ſeiſed of a Mannor whereunto the franchiſe of waife and ſtray and ſuch like are appendant, and the King purchaſeth the Mannor with the appurtenances; now are the royal Franchiſes reunited to the Crown, and not appendant to the Mannor: but if he grant the Mannor in as large and ample manner as A. had, &c. it is ſaid, that the Franchiſes ſhall be appendant (or rather appurtenant) to the Mannor.

(y) Hill and Granges Caſe, Pl. Com. 168.

Concerning things appendant and appurtenant, two things are implied. (y) Firſt, that preſcription (which regularly is the mother thereof) doth not make any thing appendant or appurtenant, unleſſe the thing appendant or appurtenant agree in quality and nature to the thing whereunto it is appendant or appurtenant. As a thing corporeal cannot properly be appendant to a thing corporeal, nor a thing incorporeal to a thing incorporeal. But things incorporeal which lie in grant, as Advowſons, Villains, Commons, and the like, may be appendant to things corporeal, as a Mannor, houſe, or lands: or things corporeal to things incorporeal, as lands to an office. (z) But yet, as hath been ſaid, they muſt agree in nature and quality; for (a) common of Turbary or of Eſtovers cannot be appendant or appurtenant to land, but to a houſe, to be ſpent there; (b) nor a Lay, that is temporal, to a Church or Chappel, which is Eccleſiaſtical. Neither can a Nobleman, Eſquire, &c. claim a ſeat in a Church by preſcrip-

(z) 1 H.7.24. Pl. Com. 169.
(a) 5 Aſſ. 9.
(b) 10 E.3.5. 37 H.6.34. 26 H.8.4. Lib.4. fol.36,37. in Tirringhams Caſe.

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tion as appendant or belonging to land, but to a house, for that such a seat belongeth to the house in respect of the inhabitancy thereof; and therefore if the house be part of a Mannor, yet in that case he may claim the seat as appendant to the house, for the reason aforesaid.

Secondly, that nothing can be properly appendant or appurtenant to any thing unless the principal or superiour thing be of perpetual subsistence and continuance: for example; An Advowson that is said to be appendant to a Mannor, is in rei veritate appendant to the Demesnes of the Mannor, which are of perpetual subsistence and continuance, and not to Rents or services, which are subject to extinguishment and destruction. 5 E. 6. Dier 70. b.

An Advowson is appendant to the Mannor of Dale, of which Mannor the Mannor of Sale is holden, the Mannor of Sale is made parcell of the Mannor of Dale by way of Escheat, the Advowson is only appendant to the Mannor of Dale.

And where it is said that a Chamber may be parcell of a Corody, and pass by the name of the Corody, which may be extinguished, there he that hath the Corody hath but his habitation in the Chamber, as a fellow of Trinity Colledg in Cambridg hath in his Chamber, or as one that had a Corody and a Chamber in a house of Religion, he had but his habitation only. As for Offices of Fee whereunto land may appertain, they are of perpetual subsistence, either being in esse, or in that they are grantable over. 31 H. 6. 15. b.

Note that an Advowson at one turn may be appendant, and at another turn in gross: as if the Mannor be divided between Coparceners, and every one hath a part of the Mannor, without saying any thing of the Advowson appendant, the Advowson remains in coparcenary, and yet in every of their turns it is appendant to that part which they have: and so it is if they make composition to present against common right, yet it remains appendant. But if upon such a partition an express exception be made of the Advowson, then the Advowson remains in Coparcenary and in gross: and so are the books reconciled. 13 E. 2. Quar. imp. 170. 43 E. 3. 35. 13 E. 3. Quar. imp. 58. 17 E. 3. 38. 9 Eliz. Dier 259. 7 E. 3. 20. 19 E. 3. Quar. imp. 59. 35 H. 6. 32, 33. 38 H. 6. 9. 2 H. 7. 5.

¶ *Common de Pasture.* (c) Communia, it cometh of the English word Common, because it is common to many, and thereupon and accordingly is here called by Littleton Common of Pasture, for that the feeding of beasts in the land wherein the Common is to be had belongs to many. (c) Glanv. lib. 13. cap. 36. Bract. lib. 4. cap. 19. & 40. Britt. cap. 55, 56, 57. Fleta lib. 4. cap. 19. Mirror cap. 5. sect. 3.

(d) There be four kinds of Common of pasture. viz. Common appendant, which is of common right, (and therefore a man need not prescribe for it) for beasts commonable, (that is) that serve for the maintenance of the plough, as horses and oxen to plough the land, and for kine and sheep to compester the land, and is appendant to arable land. (d) 20 E. 3. Admeasurement 8. Temps E. 1. Common 24. 17 E. 2. ibid. 23. 4 H. 6. 22 H. 6.

(e) The second is Common appurtenant, that is for beasts not commodiable, as swine, goats, and the like. (f) If a man purchase part of the land wherein Common appendant is to be had, the Common shall be apportioned, because it is of common right; but not so of a Common appurtenant, or of any other Common of what nature soever. But both Common appendant and appurtenant shall be apportioned by alienation of part of the land to which Common is appendant or appurtenant, and for Common appurtenant one must prescribe. (e) 37 H. 8. 34. 26 H. 8. 4. F. N. B. 181. (f) Lib. 4. fo. 37, 38, &c. Tirringhams case.

(g) The third is Common per cause de vicinage, which differeth from both the other Commons, for that no man can put his beasts therein, but they must escape thither of themselves by reason of vicinity; in which case one may inclose against the other, though it hath been so used time out of mind, for that it is but an excuse for trespass. (g) Lib. 8. fol. 78, 79. W. Wilds case.

The last is Common in gross, which is so called, for that it appertaineth to no land, and must be by writing or prescription. Of Common appendant, appurtenant, and in gross, some be certain, that is, for a certain number of beasts; some certain by consequent, viz. for such as be levant and couchant upon the land; and some be more incertain, as common sans number in gross, and yet the Tenant of the land must common or feed there also.

There be also (h) divers other Commons, as of Estovers, of Turbary, of Piscary, of digging for Coals, Minerals, and the like. (i) If Common appendant be claimed to a Mannor, yet in rei veritate it is appendant to the Demesnes, and not to the services; and therefore if a Tenancy escheat, the Lord shall not encrease his Common by reason of that. (h) Fleta ubi supra. (i) 18 E. 3. fol. 43.

(k) If a man claim by prescription any manner of Common in another mans land, and that the owner of the land shall be excluded to have Pasture, Estovers, or the like, this is a prescription or custome against the Law, to exclude the owner of the soyl; for it is against the nature of this word Common, and it was implied in the first grant, that the owner of the soyl should take his reasonable profit there, as it hath been adjudged. (l) But a man may prescribe or alledge a custome to have and enjoy Solam vesturam terræ from such a day till such a day, and hereby the owner of the soile shall be excluded to pasture or feed there: and so he may prescribe to have Separalem pasturam, and exclude the owner of the soile from feeding there. Nota diversitatem. (m) So a man may prescribe to have Separalem piscariam in such a water, and the owner of the soile shall not fish there; but if he claime to have Communiam piscariæ, or Liberam piscariam, the owner of the soile shall fish there: and all this hath (k) 15 E. 2. Prescript. 51. 12 H. 8. fol. 2. * Pasch. 26 Eliz. in the Kings Bench, inter White & Shirland in Com. Oxon. Vide Sect. 1, & 2. (l) Vide 3 E. 3. 29, 30. 4 E. 3. 7. 46 E. 3. 23. 15 E. 2. Prescript. 51. (m) 20 H. 6. 4. 10 H. 7. 24. Temps E. 1. Assise 422.

(*) Inter Chinery & Fiſhen in le Com. banke in replevin, & Mic. 29 & 30 Eliz. inter Shirland & White in Com. Oxon. & inter Foiſton & Crachrode eodem termino in Eſſex.

been reſolved. (*) And therefore it is neceſſary for every man by learned advice ſo plead according to the truth of his caſe, for Parols font plea.

(n) If man ſeiſed of land whereunto common is appendant, and is diſſeiſed, the Diſſeiſee cannot uſe the Common until he entreth into the land whereunto it is appendant. (o) But if a man be diſſeiſed of a Mannor whereunto an Advowſon is appendant, he may preſent unto the Advowſon before he enters into the Mannor. And the reaſon of this diverſity is, becauſe in the caſe of the Common it ſhould be a prejudice to the Tenant of the ſoil. For if the Diſſeiſee might do it, the Diſſeiſor might alſo put on his Cattel, which ſhould be a double charge to the Tenant: but not ſo of the Advowſon.

(n) 19 H. 6. 33.
(o) Vide ſect. 541.

Sect. 185.

¶ Item ſi home voile en Court d record ſoy conuſter deſtre villein, que ne fuit villein adevant, tiel eſt villeine en groſſe.

ALſo if a man will acknowledg himſelf in a Court of Record to be a Villein, who was not a Villein before, ſuch a one is a Villein in groſſe.

Bract. lib. 1. cap. 6. Britton fol. 78. Fleta l. 1. c. 3. 43 E. 3. 4. b. 19 E. 2. tit. vill. 34. 18 E. 4. 29. (p) 19 H. 6. 32. 26 Aſſ. 62. 37 Aſſ. 17. 11 H. 4. 16. in Appeal.

¶ This is intended in ſome action brought againſt him that made ſuch a confeſſion, (p) or where he is brought into Court by courſe of Law; for if he cometh into the Court extrajudicially, and not by any due courſe of Law, ſuch confeſſion is without warraut of Law, and bindeth not the party, becauſe the Court had no warrant to take it. But if a Præcipe be brought againſt one, he may confeſſe himſelf Villain to an eſtranger, and that he holds the land in villenage of him, and this is good, and ſhall bind him. And if in that caſe the Demandant reply, that he the day of his Writ purchaſed was a Freeman, and thereupon iſſue is taken, and he is tried to be free, yet he ſhall remain Villain to the ſtranger in reſpect of his confeſſion.

41 E. 3. tit. vill. 6.

19 H. 6. 32. b.

If a Writ of Nativo habend' be brought againſt one, and the Plaintiff, as he ought, offereth in his Court to prove the villenage by the Couſins and kindred of the Defendant, and thereupon produceth the Uncles of the Defendant, who upon examination confeſs themſelves to be Villains to the Demandant; this confeſſion being entred of Record, doth ſo bind, that albeit they were ſo free before, they and the heirs of their bodies are by this confeſſion bond and Villains for ever, for the Uncles came in by due courſe of Law in an action depending in Court.

Sect. 186.

¶ Item home que eſt villein eſt appelle villein, & feme que eſt villeine eſt appelle Miek: Sicome home que eſt utlage eſt dit utlage, & feme que eſt utlage eſt dit waibe.

ALſo a man which is a villein is called a Villein, and a woman which is villein is called a Niefe: As a man which is outlawed is called Outlawed, and a woman which is outlaw'd is called Waived.

F. N. B. 161. a. Regiſt. 132. & 277. Brit. fol. 20. Bract. lib. 3. tract. 2. c. 12, 13. Fleta lib. 1. cap. 28. 3 H. 5. tit. Utlawry Statham.

¶ Niefe, or Naife, is in Latine Naturalis, ſeu nativa, becauſe for the moſt part Niefs are bond by Nativity.

¶ *Feme que eſt utlage eſt dit waive.* Waive, Waviata, and not utlegata or exlex, for that women are not ſworn in Leets or Torns, as men which be of the age of twelve years or more be; and therefore men may be called utlegati, id eſt, extra legem poſiti, but women are Waiviatæ, id eſt, derelictæ, left out, or not regarded, becauſe they were not ſworn to the Law, wherein it is to be noted, that of ancient time a man was not ſaid to be within the Law that was not ſworn to the Law, which is intended of the Oath of Allegeance in the Leet.

Regiſt. orig. 132.

And the Outlawry of a woman is legally called Waviaria mulieris.

Sect.

Sect. 187.

¶ Item ſi un Villein prent franke feme a feme, & ad iſſue enter eux, liſſues ſerront Villeines. Mes ſi nieſe prent franke-home a ſa baron, lour iſſues ſerra franke.

* Et ceſt contrarie a le Ley Civil, car la eſt dit, Partus ſequitur ventrem. *

ALſo if a Villein taketh a freewoman to wife, and have iſſue between them, the iſſue ſhall be Villeins. But if a Nieſe taketh a Freeman to her husband, their iſſue ſhall be free.

* This is contrary to the Civill Law, for there it is ſaid, *Partus ſequitur ventrem.* *

¶ SUrculus totum alimentum à ſtipite capit, poma tamen edit ſua. The Cions takes all his nouriſhment from the ſtock, and yet it produceth his own fruit. Forteſcue cap. 42. Glanvil lib. 5. cap. 6. Hill. 29 E. 1. coram Rege, Eborum in Theſaur.

(o) Si quis de ſervo patre natus ſit & matre libera, pro ſervo reddatur occiſus in ea parte, quia ſemper à patre non à matre generationis ordo texitur: ſi pater ſit liber & mater ancilla, pro libero reddatur occiſus. (r) Lex Angliæ nunquam matris, ſed ſemper patris conditionem imitari partum judicat. (q) Lib. rub. cap. 77. (r) Forteſcue ubi ſupra.

(ſ) The husband and wife are all one perſon in Law, and the Nieſe marrying a Freeman is infranchiſed during the coverture, and therefore by the Common Law of England the iſſue is free. (ſ) Herewith agreeth Britton fol. 78. b.

(t) Si mulier ſerva copulata ſit libero, &c. quod partus habebit hæreditatem, & mater nullam dotem, quia mortuo viro ſuo libero redit in priſtinum ſtatum ſervitutis, niſi hæres ei dotem fecerit de gratia. And when a bondman marrieth a freewoman, they are all one perſon in Law, and Duæ animæ in carne una; and Uxor ſubjecta eſt viro, & ſub poteſtate viri. (t) Bract. lib. 4. fol. 298. b. Idem lib. 1. cap. 6. Mirror cap. 2. ſect. 18.

(u) Obſervatur in Com' Cornubiæ de tali conſuetudine, quæ talis eſt, quod ſi liber homo ducat nativam aliquam in uxorem ad liberum tenementum & liberum thorum, ſi ex ea duæ procreantur filiæ, una erit libera, & altera villana, quia ibi partiti ſunt pueri inter liberum patrem & dominum uxoris villanæ. (u) Bract. lib. 4. fol. 271.

(x) Qui vero procreantur ex nativa unius & nativo alterius, proportionabiliter inter Dominos ſunt dividendi. (x) Glanvil lib. 5. cap. 6.

¶ *Et ceo eſt contrarie al Ley Civil.* For true it is that by that Law Partus ſequitur ventrem, as well where a Freeman takes a bondwoman to wife, as where a bondman takes a freewoman to wife. In the firſt caſe the iſſue is by the Civil Law bond, and in the other free: both which caſes are contrary to the Law of England. But this is no part of Littleton, and therefore we in this manner paſs it over. Forteſcue cap. 42.

Sect. 188.

¶ Item nul baſtard poet eſtre villeine, ſi non que il voile ſoy conuſter eſtre villeine en court de record, car il eſt en ley quaſi nullius filius, pur ceo que il ne poit enheriter a nulluy.

ALſo no baſtard may be a villein, unleſs he will acknowledg himſelf to be a Villein in a Court of Record, for he is in Law *quaſi nullius filius*, becauſe he cannot be heir to any.

¶ *Nullius* (a) *filius.* Cui pater eſt populus, pater eſt ibi nullus, & omnis.

Cui pater eſt populus, non habet ille patrem. (a) Vide ſect. 399. 13 E. 1. tit. villein 36.

(b) Some hold that the Baſtard of a Nieſe ſhall be a Villain. (c) And others hold that if a Villain hath a Baſtard by a woman, and after marrieth the woman, that this Baſtard is a Villain. (b) Bract. lib. 1. fol. 5. 4. Fleta lib. 1. cap. 3. Britton fol. 78. (c) 39 E. 3. 34. 43 E. 3. 4. Britton ubi ſupra.

But the Law is contrary in both caſes, for in both caſes the iſſue by the Common Law is a Baſtard, and conſequently quaſi nullius filius, as Littleton here ſaith. (d) Though a Baſtard be a reputed ſon, yet is he not ſuch a ſon in conſideration whereof an uſe can be raiſed, for the reaſon that Littleton here yields, becauſe in judgment of Law he is nullius filius. (e) And (d) 23 Eliz. Dier 374. (e) 13 Eliz. Dier 296.

14 Eliz. Dier 313. 18 Eliz. Dier 345.

for the ſame reaſon where the Statute of 32 H.8. of Wills ſpeaketh of Children, baſtard children are not within that Statute; and the baſtard of a woman is no child within that Statute, where the Mother conveys lands unto him.

(f) Trin. 18 E. 1. Rot. 61. Bedf. coram Rege.

(f) It was found by verdict that Henry the ſon of Beatrice, which was the wife of Robert Radwell deceaſed, was born per undecim dies poſt ultimum tempus legitimum mulieribus conſtitutum. And thereupon it was adjudged, Quod dictus Henricus dici non debet filius prædicti Roberti ſecundum legem & conſuetudinem Angliæ conſtitut. Now Legitimum tempus in that caſe appointed by Law at the furtheſt is nine months, or forty weeks, but ſhe may be delivered before that time, which judgment I thought good to mention. And this agreeth with that in Eſdras: Vade & interroga prægnantem, ſi, quando impleverit novem menſes ſuos, adhuc poterit matrix ejus retinere partum in ſemetipſa. Et dixi, Non poteſt Domine.

4 Eſdras 4. 41. Vide Panciroll. nova reperta, pag. 485, &c.

Sect. 189.

¶ *Cheſcun villeine eſt able & franke de ſuer, &c.* (g) In an Action brought by a Villain Verſus non Dominum, non valebit ei exceptio, quia eſt ſervus alienus, ex quo nihil ad ipſum utrum liber ſit an ſervus. (h) And it is to be obſerved, that he that hath but a particular eſtate in a Villain, as Tenant for life or for years, ſhall diſable the Villain if he brings an action againſt him; but the Leſſor ſhall not (as it is ſaid) diſable him. (i) Examinatio villenagii non tenet, niſi ex ore veri Domini fuerit pronunciata.

¶ Item cheſcun villein eſt able & franke de ſuer touts manners dactions envers cheſcun perſon, forſprys envers ſon Seignior a que il eſt villeine. Et uncore en certein choſes il poit aver action envers ſon Seignior. Car il poit aver envers ſon Seignior un action dappeale de mort ſon pere, ou dauters de les auncestors que heire il eſt.

Alſo every Villein is able and free to ſue all manner of Actions againſt every perſon, except againſt his Lord to whom he is Villein. And yet in certain things he may have againſt his Lord an Action. For he may have againſt his Lord an action of appeal for the death of his Father, or of his other Anceſtors whoſe heir he is.

(g) Bracton lib. 4. fol. 196. Britton cap. 49. fol. 125.

(h) 14 E. 4. 6. b. 15 E. 4. 32. 20 E. 3. tit. villein. 10. 38 E. 3. 21.

(i) Fleta lib. 2. cap. 4.

¶ *Appeale.* Appellum cometh of the French word Appeller, that ſignifieth to accuſe, or to appeach. In Appeach. (k) In Appeal is an accuſation of one upon another with a purpoſe to attaint him of felony by words ordained for it.

(k) Brit. cap. 22. fol. 38. Bracton lib. 1. fol. 6.

¶ *De mort.* (l) For a Villain ſhall not have an appeal of Robbery againſt his Lord, for that he may lawfully take the goods of the Villain as his own. (m) And if in an Appeal of death it be found for the Plaintiff, he is infranchiſed for ever. Hinc enim eſt quod eo ipſo ſunt hujuſmodi Domini ſervos ſuos amiſſuri cum de injuriis fuerunt convicti. And there is no diverſity herein whether he be a Villain regardant, or in groſs, although ſome have ſaid the contrary.

(l) 18 E. 3. 32. 11 H. 4. 93. 1 H. 4. 6. 29 H. 6. tit. Corone 17.
(m) Fleta lib. 1. cap. 5. 1 H. 4. 6.

Sect. 190.

¶ *Rape.* (n) Raptus is when a man hath carnall knowledge of a woman by force and againſt her will.

¶ Auxy un Miese que eſt ravie per ſa Seignior poit aver un appeale de rape envers luy.

Alſo a Nieſe that is raviſhed by her Lord may have an Appeal of Rape againſt him.

(n) Mirror cap. 1. Sect. 12. Cap. 3. de Rape, & cap. 4. de Homicide.

¶ *Appeale de Rape.* By the general purview of the Statutes (*) that give the Appeal of Rape, the Nieſe ſhall have an Appeal of Rape againſt the Lord. (o) And it ſeemeth by the ancient Authors of the Law, that this ſo hainous an offence was ſeverely puniſhed by loſſe of eyes and privy members, but of old time it was Felony, which you may read at large in the ſecond part of the Inſtitutes, W. 1. cap. 13.

(*) W. 1. c. 13. W. 2. c. 35. 6 R. 2. cap. 6. 11 H. 4. cap. 13. 1 E. 4. cap. 1.
(o) 29 H. 6. tit. Coro. 17. Bracton lib. 3. fol. 147.

(p) And

(p) And this word Rape which our Author here uſeth is ſo appropriated by Law to this caſe, as without this word (Rapuit) it cannot be expreſſed by any Periphraſis or circumlocution; for, Carnaliter cognovit eam, or the like, will not ſerve. (p) 9 E. 4. 26. Mir. cap. 1. ſect. 13.

Sect. 191.

¶ Auxy ſi un villeine ſoit fait executr a un aut, & le Sr del villeine ſuit en dette a le teſtator en un certeine ſumme dargent que neſt my paie, en ceo caſe le villeine come executor de le teſtator avera action de det envers ſon Seignior, pur ceo que il ne recovera le det a ſon uſe demeſne, mes al uſe le teſtator.

ALſo if a Villein be made Executor to another, and the Lord of the Villein was indebted to the Teſtator in a certain ſum of money which is not paid, in this caſe the Villein as Executor of the Teſtator ſhall have an Action of debt againſt his Lord, becauſe he ſhall not recover the debt to his own uſe, but to the uſe of the Teſtator.

¶ Of this matter ſufficient hath been ſpoken in this Chapter before. The Villain ſhall have an action as executor againſt his Lord, and it is no plea for the Lord to ſay, that the Plaintiff is his Villain, for he ſhall not be enfranchiſed by the uſer of this action, becauſe he hath it by a gift in Law to the uſe of the Teſtator, and not to his own uſe. 21 E. 4. 30. 2.

Sect. 192.

¶ Item le Sr ne poit prender hors del poſſeſſion de tiel villein que eſt Executor les biens le mortz; & ſil face, le villein come Executor avera action de treſpaſſe de meſmes les biens iſſint prizes envers ſon Sr, & recovera damages al uſe le teſtator. Mes en touts tielx caſes il covient que la Seignior, que eſt defendant en tielx actions, face protеſtation que le plaintife eſt ſon villeine, ou auterment le villeine ſerra enfranchiſe, co-

ALſo the Lord may not take out of the poſſeſſion of ſuch Villein who is Executor the goods of the deceaſed; and if he doth, the Villein as Executor ſhall have an action for the ſame goods ſo taken againſt his Lord, and ſhall recover damages to the uſe of the teſtator. But in all ſuch caſes it behoveth that the Lord, which is Defendant in ſuch Actions, maketh proteſtation that the Plaintiff is his Villein, or otherwiſe the Villein ſhall be infran-

¶ *LE Seignior ne poit prender hors del poſſeſſion, &c.* Of this alſo ſufficient hath been ſaid before.

¶ *Et recovera damages al uſe del Teſtator.*

(q) Note, damages recovered by the Executor in an action of treſpaſs ſhall be aſſets, and yet they were never in the Teſtator. And ſo it is in other like caſes, as by our books it appeareth. (q) 21 E. 4. 4. b. 11 H. 6. 35. b. 3 H. 6. 2. 2 H. 4. 21. 1 H. 4. 6.

(r) If an Executor hath a Villain for years, and the villain purchaſes lands in fee, the Executor entreth, he ſhall have the whole for ſimple; but becauſe he had the Villain in auter droit, viz. as Executor to the uſe of the dead, it ſhall be aſſets in his hands. Note a diverſity between the quantity of the eſtate, and the quality of it; for the Law reſpecteth not the quantity of the eſtate; for not onely (r) Doct. & Stud. Brook tit. Villenage 70.

(ſ) Tenant

(f) L. 5 E. 4. 61.

(f) Tenant in tail and Tenant for life of a Villain ſhall have the perquiſite of the Villain in fee, but (t) Tenant for years and Tenant at will ſhall alſo have it in fee.

(t) 21 H. 6. 37.

ment que le matter ſoit trove p̄ le Sñr, & encounter le villein, come eſt dit.

chiſed, although the matter be found for the Lord, and againſt the villein, as it is ſaid.

But the Law reſpecteth the quality, for in what right he hath the Villain, in the ſame right ſhall he have the perquiſite; as in the caſe of the Executor abovеſaid, and in the caſe of the Biſhop (u) that hath the Villain in right of his Church, he ſhall have the perquiſite in the ſame right.

(u) 41 E. 21.

(x) 18 E. 3. 29.

(x) So if a man hath a Villain in the right of his wife, he ſhall have the perquiſite alſo in her right. But if the purchaſe be after iſſue had, then the Baron ſhall have the perquiſite to him and his heirs, becauſe by the iſſue he is intituled to be Tenant by the Curteſie in his own right.

Vide ſect. 193.
(y) Pl. Com. 276. b. in Greisbrooks Caſe.

¶ *Proteſtation.* (y) Proteſtatio is an excluſion of a concluſion that a party to an action may by pleading incurre; or it is a ſafegard to the party, which keepeth him from being concluded by the plea he is to make, if the iſſue be found for him: but in this caſe without a proteſtation, albeit the iſſue be found for the Lord, the Villain ſhall be enfranchiſed, as it appeareth hereafter in this Section.

Sect. 193.

Brit. fol. 79. 125. b. 126. 2.

¶ *Ceo ſerra trie en le County, &c.* Be tried, that is, as it is intended, by the verdict of twelve men. That is called in Law a Trial, triatio.

(a) 7 E. 3. 50. 26 E. 3. 73. 38 E. 3. 34. 40 E. 3. 36. 43 E. 3. 4. 31. 44 E. 3. 36. 47 E. 3. 26. 22 H. 6. 52. 35 H. 6. 12. 39 H. 6. 24. Vide ſect. 534.

(a) In this caſe the Law doth favour the Villain in the iſſue; for otherwiſe by the rule of Law in like caſes he ought to anſwer to the ſpecial matter, viz. to the regardancy, but in favour of liberty he may reply that he is free and of free eſtate; and conſequently this iſſue concerning the perſon ſhall be tried where the writ is brought.

(b) 2 Mar. Dier 112.

(b) The like Law it is, if iſſue be joyned upon the Ideocy of the Plaintiff or Defendant, it ſhall be tried where the writ is brought, becauſe it concerneth the perſon.

¶ *In favorem libertatis.* It is commonly ſaid, that three things be favoured in Law, Life, Liberty, Dower.

(c) Fortеſcue cap. 42.

(c) Impius & crudelis judicandus eſt qui libertati non favet: Angliæ jura in omni caſu libertati dant favorem.

Triall is, to find out by due examination the truth of the point in iſſue or queſtion between the parties, where-

¶ Item ſi Villeine ſuiſt un action de treſpas, ou un auter action, envers ſon Sñr en un Countie, & le Sñr dit q̄ il ne ſerra reſpondus, pur ceo q̄ il eſt ſon villein regardant a ſon mannor en auter Countie, & le Plaintife dit que il eſt franke, & de franke eſtate, & nemy villein; ceo ſerra trie en le Countie lou le Plaintife avoit conceive ſon action, & nemy en le county lou le mannor eſt, & ceo eſt in favorem libertatis. Et pur tel cauſe un eſtatute fuit fait an. 9. R. 2. cap. 2. le tenor de quel enſuiſt en tiel forme. Item pur la ou pluſors villeins & Nieſes, cibien des graundes Seigni-

Alſo if a Villein ſueth an action of treſpaſſe, or any other action, againſt his Lord in one County, and the Lord ſaith that he ſhall not be anſwered, becauſe he is his Villein regardant to his Mannour in another County, and the Plaintiſe ſaith that he is free, and of a free eſtate, and not a villein; this ſhall be tried in the County where the Plaintiſe hath conceived his action, and not in the County where the Mannor is, and this is in favour of liberty. And for this cauſe a Statute was made *an.* 9. *R.* 2. *cap.* 2. the tenor whereof followeth in this form. Alſo for that where many Villeins & Nieſs,

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ors come des auters gentes, tibñ eſpirituals come temporals, ſenſuent deins cities, villes, & lieux enfranchiſe, come en la citie de Londres, & auters ſemblables, & feignont divers ſuits envers lour Sñrs, a cauſe de eux faiſ franks per le reſpons de lour Sñrs: Accorde eſt & aſſentus, que les Sñrs ne auters ne ſoyent my forbarres de lour Villeines per cauſe de lour reſpons en ley. Perforce de quel eſtatute, ſi alcun villeine voilloit ſuer alcun maner de action a ſon uſe demeſn en alcun Countie, ou il eſt forz a trier envers ſon Seignior, le Sñr poyt eſſyer de pleader que le Plaintife eſt ſon villein, ou de faire proteſtation que il eſt ſon villein, & de pleader ſon auter matter en barre. Et ſi ils ſont a iſſue, & iſſue ſoit trove pur le Sñr, dõq; le villein eſt villeine come il fuit devant, per force de meſme leſtatute. Mes ſi le iſſue ſoit trove pur le villeine, donque le villeine eſt franke, pur ceo que le

as well of great Lords as of other men, as well of ſpirituall and temporal, flie and go into Cities, Townes and places franchiſed, as into the City of *London*, and other like places, and feign divers Suits againſt their Lords, becauſe they would make themſelves free by the anſwer of their Lords: It is accorded and aſſented, that Lords nor others ſhall not be forebarred of their villeins by reaſon of their anſwer in Law. By force of which Statute, if any villein will ſue any manner of action to his own uſe in any County, where it is hard to try againſt his Lord, the Lord may chuſe whether he will plead that the Plaintife is his villein, or make proteſtation that he is his villein, and plead his other matter in bar. And if they be at iſſue, and the iſſue be found for the Lord, then the villein is a villein as he was before, by force of the ſame Statute. But if the iſſue be found for the villein, then the villein is free, becauſe that the Lord took

upon judgment may be given. And as the queſtion betwixt the parties is twofold, ſo is the trial thereof: for either it is quæſtio juris, (and that ſhall be tried by the Judges, either upon a Demurrer, ſpecial Verdict, or exception, for Cuilibet in ſua arte perito eſt credendum: & quod quiſque norit, in hoc ſe exerceat: and it is commonly and truly ſaid, Ad quæſtionem juris non reſpondent juratores) or it is quæſtio facti. And the trial of the fact is in divers ſorts, whereof a light touch is given before, Sect. 102. Of theſe a trial by twelve men (here intended by Littleton) is the moſt frequent and common. And ſome few rules of Law are neceſſary here to be remembred, (for the better underſtanding of the Books of Law hereafter) where and from what place, viz. de quo vicineto, out of what neighbourhood the Jury ſhall come, a neceſſary point to be known: for if there be a miſ-trial, (that is) if the Jury cometh out of a wrong place, or returned by a wrong Officer, and give a verdict, judgment ought not to be given upon ſuch a verdict. (d) Wherein the moſt general rule is, that every trial ſhall be out of that Town, Pariſh, or Hamlet, or place known out of the Town, &c. within the Record, within which the matter of fact iſſuable is alledged, which is moſt certain, and neareſt thereunto, the inhabitants whereof may have the better and more certain knowledge of the fact: as if the fact be alledged in quadam platea vocat' Kings-ſtreet in Civitate Weſtm' in Com' Midd. in this caſe the Miſne cannot come out of Platea, becauſe it is neither Town, Pariſh, Hamlet, nor place out of the neighbourhood whereof a Jury may come by Law; but in this caſe it ſhall not come out of Weſtminſter, but out of the Pariſh of St. Margaret, becauſe that is the moſt certain. But therein

Vide ſect. 234.

Vide ſect. 102.

Vide ſect. 234. more of this matter.

(d) 3 E.3.73. 20 H.6.30. 7 H.4.27. 9 H.5.8. 8 H.6.34. 7 H.6.27. 17 E.3.56. 43 E.3.5. 47 E.3.6. 34 H.6.1.

therein alſo it is to be noted, that if it had been alledged in Kingſtreet, in the Pariſh of St. Margarer, in the County of Middleſex, then it ſhould have come out of Kingſtreet, for then ſhould Kingſtreet have been eſteemed in Law a Town: (e) for whenſoever a place is alledged generally in pleading, (without ſome addition to declare the contrary, as in this caſe it is) it ſhall be taken for a Town. (f) And albeit Parochia generally alledged is a place incertain, and may (as we ſee by experience) include divers Towns; yet if a matter be alledged in Parochia, it ſhall be intended in Law that it containeth no more Towns then one, unleſſe the party doth ſhew the contrary. (g) But when a Pariſh is alledged within a City, there without queſtion the Viſne ſhall come out of the Pariſh, for that is more certain then the City.

Seignior ne priſt al commencement pur ſon plée que le villeine fuit ſon villein, mes ceo priſt per protestation, &c.

not at the beginning for his Plee that the Villein was his Villein, but took this by proteſtation, &c.

(h) If a treſpaſs be alledged in D, and Nul tiel ville is pleaded, the Jury ſhall come out de corpore comitatus; but if it be alledged in S and D, and nul tiel ville de D is pleaded, the Jury ſhall come out de Vicineto de S. for that is the more certain. So if a matter be alledged within a Mannor, the Jury ſhall come de Vicineto manerii; but if the Mannor be alledged within a Town, it ſhall come out of the Town, becauſe that is moſt certain; for the Mannor may extend into divers Towns. And all theſe points were reſolved by all the Judges of England, upon conference between them in the caſe of John Arundel Eſquire, indited for the death of William Parker. *

(i) In a real action where the Demandant demands land in one County, as heir to his Father, and alledges his birth in another County, if it be denied that he is heir, it ſhall not be tried where the birth was alledged, but where the land lieth, for there the Law preſumes it ſhall be beſt known who is heir. But if the Demandant make himſelf heir to a woman, for that is the ſurer and more certain ſide, and the Mother is certain, when perhaps the Father is uncertain; therefore there it ſhall be tried where the birth is alledged, becauſe they have more certain conuſance then where the land lieth. And ſo it is where generally baſtardy is alledged, the trial ſhall be in like caſe, mutatis mutandis. (k) If a man plead the Kings Letters Patents, and the other party plead Non conceſſit, it ſhall not be tried where the Letters Patents bear date, for they cannot be denied, but where the land lieth.

Every trial muſt come out of the neighbourhood of a Caſtle, Mannor, Town or Hamlet, or place known out of a Caſtle, Mannor, Town or Hamlet, as ſome Forreſts, and the like, as before, and by the Authorities thereupon quoted, appeareth.

Every plea concerning the perſon of the Plaintiff, &c. ſhall be tried where the Writ is brought, as it appeareth before.

When the matter alledged extendeth into a place at the Common Law, and a place within a Franchiſe, it ſhall be tried at the Common Law.

(l) In an action againſt two, the one pleads to the Writ, the other to the Action, the plea to the Writ ſhall be firſt tried; for if that be found, all the whole Writ ſhall abate, and make an end of the buſineſſe.

(m) In a plea perſonal againſt divers Defendants, the one Defendant pleads in bar to parcel, or which extendeth only to him that pleadeth it, and the other pleads a plea which goeth to the whole, the plea that goeth to the whole, (that is) to both Defendants, ſhall be firſt tried, and of this opinion was Littleton in our Books, for the trial of that goeth to the whole, and the other Defendant ſhall have advantage thereof; for in a perſonal Action the diſcharge of one is the diſcharge of both. As for example, if one of the Defendants in treſpaſs pleads a releaſe to himſelf, (which in Law extends to both) and the other pleads not guilty, (which extends but to himſelf;) or if one plead a plea which excuſes himſelf only, and the other plead another plea which goeth to the whole; the plea which goeth to the whole ſhall be firſt tried, for if that be found it maketh an end of all; and the other Defendant ſhall take advantage hereof, becauſe the diſcharge of one is the diſcharge of both. But in a plea-real it is otherwiſe, for every Tenant may loſe his part of the land: (n) as if a Præcipe be brought as heir to his Father againſt two, and one plead a plea which extendeth but to himſelf, and the other pleads a plea which extends to both, as baſtardy in the Demandant, and it is found for him; yet the other iſſue ſhall be tried, for he ſhall not take advantage of the plea of the other, becauſe one joynt-tenant may loſe his part by his miſplea. (o) But where an iſſue is joined for part, and a Demurrer for the reſidue, the Court may direct the trial of the iſſue, or judge the Demurrer firſt, at their pleaſure.

(p) If a Venire fac. be awarded to the Coroners where it ought to be to the Sheriff, or the Viſne cometh out of a wrong place; yet if it be Per aſſenſum partium, and ſo entred of Record, it

(e) 4 E. 3. 30. 8 E. 3. 68. 39 H. 6. 13. Brooke pleading 61.

(f) 4 E. 4. 41. 5 E 4. 20. 22 E. 4. 2. 35 H. 6. 30. 22 H. 6. 47. Lib. 1. 162. Digges Caſe. Lib. 11. f. 25. Lib. 6. fol. 14.

(g) 1 E. 3. 8. 7 H. 6. 38.

(h) 22 E. 4. tit. viſne F. 27. 6 H. 7. 3. b. 11 H. 2. 7. 22. b. 9 E. 4. 3. a. 3 E. 4. 26. 39 H. 6. treſp. 93. 4 E. 3. 30.

(*) Lib. 6. fo. 14. Arundels Caſe.

(i) 45 E. 2. 5. 2. 46 E. 3. 6, & 7. Gernons Caſe. 18 E. 3. 58. 11 H. 4. 56. b. 57. 17 E. 3. 36. b. 39 Aſſ. 10. 38 Aſſ. 30. 35 Aſſ. 7.

(k) Mich. 31 & 32 Eliz. Rot. 365. in the Kings Bench, inter Edan & Frankline, adiudg. 3 Mar. Dier 129. 18 Eliz. Dier 353. 17 Eliz. Dier 342.

(l) 8 E. 4. 24. 9 H. 6. 46, 47. 21 H. 6. 4. 18 Aſſ. 7. 30 E. 3. 16, 17. 7 E. 4. 31. 2 7 H. 8. 30. 11 H. 4. 68.

(m) 15 E. 4. 25. b. 9 H. 6. 4 6. 26 E. 3. 7 E. 4. 31. 39 E. 3. 16, 17.

(n) 9 H. 6. 46. 39 E. 3. 16, 17.

(o) Lib. 10. fo. 54. and the books there cited.

(p) Mich. 21 & 22 Eliz. Dier 367. Lib. 5. fo. 36. b. Bainhams Caſe. 39 E. 3. 2. b. 44 E. 3. 6. 11 H. 6. 13. Lib. 5. fol. 40. Dormers Caſe.

it ſhall ſtand; for Omnis conſenſus tollit errorem. And thus much of theſe excellent points of learning: and if you deſire to know the inſtitution and right uſe of this trial by twelve men, and of the antiquity thereof, and more of this matter, read the 234. Section hereafter, which is worthy of your obſervation. Vid. ſect. 234.

¶ *Eſtatute.* Or Statute. This cometh of the Latine word Statutum, which is taken for an Act of Parliament made by the King, the Lords and Commons, and is divided into two branches, general and ſpecial. This Statute here mentioned is a general Statute, and is darkly and obſcurely penned. Vid. 25 E.3. cap. 18. F.N.B.177. c. 26 E.3.73.

¶ *Et ſils ſont a iſſue.* (q) Iſſue, Exitus, a ſingle, certain and material point iſſuing out of the allegations and pleas of the Plaintiff and Defendant, conſiſting regularly upon an affirmative and negative to be tried by twelve men: and it is twofold, a ſpecial iſſue, as here in the caſe of Littleton; or general, as in treſpaſs, Not guilty, in aſſiſe, Nul tort, nul diſſeiſin, &c. And as an iſſue natural cometh of two ſeveral perſons, ſo an iſſue legal iſſueth out of two ſeveral allegations of adverſe parties. (q) Vid. ſect. 414. 7 H.6. 43. 9 E.4.36. 36 H.6.15. 5 E.4.26. 11 H.4.79.

And to make our books more eaſie to be underſtood concerning this point, it is good to ſet down ſome neceſſary rules, among many other, concerning joyning of iſſues. An iſſue being taken generally referreth to the Count, and not to the Writ: as in an Account the Writ chargeth him generally to be his Receiver, the Count chargeth him ſpecially to be his Receiver by the hands of T. the Defendant pleadeth that he was never his Receiver in manner and form, &c. this ſhall refer to the Count, ſo as he cannot be charged but by the receipt by the hands of T. 7 E. 3. 34.

(r) A ſpecial iſſue muſt be taken in one certain material point which may be beſt underſtood, and beſt tried. (r) 20 E.3. Iſſue 31. 22 E. 4. 28. 8 E.3.8. 9 H.6.18. 38 E. 3. 33.

(ſ) An iſſue ſhall not be taken upon a negative pregnant, which implieth another ſufficient matter, but upon that which is ſingle and ſimple: as Ne dona pas per le fait implies a gift by parol, therefore the iſſue muſt be, Ne dona pas modo & forma. (ſ) 21 H.6.9.b. 16 E.4.5. 24 E.3.32,33.75. 31 E.3. Iſſue 17.13 E.3.lib.27.21 E.3.49. 30 E.3.8. 10 E.3. 32. 22 E.3.13. 18 E.3. Iſſue 35. 5 H.7.8. 31 Aſſ.25.

(t) An iſſue joyned upon an Abſque hoc, &c. ought to have an affirmative after it: two affirmatives ſhall not make an iſſue, unleſs it be leſt the iſſue ſhould not be tried.

(u) Some iſſues be good upon matter affirmative and negative, albeit the affirmative and negative be not in preciſe words: as in debt for Rent upon a leaſe for years, the Defendant pleads that the Plaintiff had nothing at the time of the Leaſe made, the Plaintiff replieth that he was ſeiſed in fee, &c. this is a good iſſue. (u) 12 E.4.4.8. 2 H.4.23. 38 H.6.22. 40 E.3.5. 5 E.3.24. (t) 18 El. Dier 353. 22 H. 6. 19. 32 H.6.23. 2 R.3. 6 H.7.5. 11 H.4.79.

(w) Where the iſſue is joyned of the part of the Defendant, the entry is, Et de hoc ponit ſe ſuper patriam: but if it be of the part of the Plaintiff, the entry is, Et hoc petit quod inquiratur per patriam. (u) 2 H.7.4. 5 H.7.12. 26. 11 H.4.83. 6 E.4.6.b. 26 H.8. Dier 6. in Formedon. 28 H.8.Dier 31. 18 H.6.8, 9. 15 E.4.32. 32 H.6.23.

(x) There be ſome negative pleas that be iſſues of themſelves, whereunto the Demandant or Plaintiff cannot reply, no more then to a general iſſue, which is, Et prædictus A. ſimiliter. As if the Tenant do vouch, and the Demandant counterplead that the Vouchee or any of his Anceſtors had any thing, &c. whereof he might make a Feoffment, he ſhall conclude, Et hoc petit quod inquiratur per patriam, & prædictus Tenens ſimiliter. So in a fine pleaded by the Tenant, &c. the Demandant may ſay, Quod partes finis nihil habuerunt, & hoc petit quod inquiratur per patriam, & præd' tenens ſimiliter. And ſo in a Writ of Dower, the Tenant pleads Unques ſeiſie que Dower, he ſhall conclude, Et de hoc ponit ſe ſuper patriam, & præd' petens ſimiliter. And ſo in many other caſes. And of this opinion was Littleton in our books. (y) A man leaveth his wife enſeint with a child, iſſue ſhall not be taken that ſhe was not enſeint by her husband on the day of his death, for Filiatio non poteſt probari, but the iſſue muſt be, Whether ſhe was enſeint the day of his death. (x) 7 H.6.27. 43 Aſſ. 49 E.4. 36. Pl. Com.172.a. 36 H.6. 15. (w) 26 H.8.3. 18 El. Dier 353. (x) 22 H.6.57.59. 33 H.6. 21. 3 H.7.9. 12 E.4.13. 17 E.3.53.77,78. 22 E.3. 16,17.24 E.3.50. 40 E.3. 19. (y) 41 E.3.11.b.

(z) A proteſtation availeth not the party that taketh it, if the iſſue be found againſt him: and therefore if the iſſue be found for the Villain, he is infranchiſed for ever. And yet in ſome ſpecial caſe, albeit the iſſue be found againſt him that maketh the proteſtation, yet he ſhall take benefit of his proteſtation: (*) as if a man entreth into Warranty, and taketh by proteſtation the value of the land, albeit the plea be found againſt him, yet the proteſtation ſhall ſerve him for the value. (z) 10 E.4. Proteſt.5. 10 E.4.12. 32 Aſſ.9. 30 E.3.14. 9 H.6.59. Vide ſect. 192. (*) 30 E.3.14.

Sect. 194.

¶ Item le Sir ne poet mayhemer ſon villeine. Car ſil mayhema ſon villein, Alſo the Lord may not maime his Villein. For if he maime his Villein, ¶ *Mayhemer*, (a) or Mehaigner, a French word, of which cometh Mayhim, Mahemium, (id eſt) membri mutilatio; and (a) Stamf.li.1.cap.41. Glanvil lib.14. cap.7. Bract. lib.3. fol.144,145. Brit. cap.25. fol.48,49. Fleta lib.1. cap.38.

Mirror cap. 1. sect. 9.

and membrum est pars corporis habens destinatam operationem in corpore. Mayhemium vero dici poterit, ubi aliquis in aliqua parte sui corporis effectus sit inutilis ad pugnandum. And the Law hath so appropriated this word Mayhem, which our Author here useth, to this offence, as mayhemavit cannot be expressed by any other word, as mutilavit, truncavit, or detruncavit, or the like.

Vide Sect. 1.

¶ *Il serra indite.* Or rather endite, and so is the originall, for it cometh of the French word enditer, and signifieth in Law an accusation found by an Enquest of twelve or more upon their Oath; and the accusation is called Indictamentum. And as the Appeal is ever the suit of the party, so the Enditement is always the suit of the King, and as it were his Declaration. (b) Some derive it from the Greek word ἐνδείκνυμι, to accuse.

(b) Lamb. Just. of peace.

¶ (c) *Navera, &c. Appeale de mayhem.* Because in that Appeal he shall recover but damages, which the Lord after Execution might take again, and so the judgment be inutile and illusory; and Sapiens incipit à fine. And the Law never giveth an Action where the end of it can bring no profit or benefit to the Plaintiff. But here it is to be observed, that albeit the party grieved can have no action for the Mayhem, yet at the Kings suit he shall be punished therefore, for the reason hereafter expressed in this Section. (d) And in ancient time there were Appeals de plagis & de imprisonamento, but they are out of use, and turned to actions of trespass.

(c) Vide 1 H. 4. 6. b.

(d) Fleta lib. 1. cap. 40. Britt. cap. 25. Bract. 145. Mirror cap. 3.

¶ *Fine*, Finis. Here Fine signifieth a pecuniary punishment for an offence, or a contempt committed against the King; and regularly to it Imprisonment appertaineth. And it is called finis, because it is an end for that offence. (e) And in this case a man is said Facere finem de transgressione, &c. cum Rege, to make an end, or fine, with the King for such a transgression. It is also taken for a Dumm given by the Tenant to the Lord for concord, and an end to be made. (f) It is also taken for the highest and best assurance of Lands, &c.

(e) Regist. Judic. 25. Lib. 8. tol. 59. Beechers Case.

(f) Vide sect. 74. 174. 441.

Here it is good to see what a Fine differeth from an Amerciament. (g) Amerciament in Latine is called Misericordia, for that it ought to be assessed mercifully: and this ought to be moderated by affærment of his equals, or else a Writ De moderata misericordia doth lie: and thereof Glanvil saith thus, (h) Est autem misericordia Domini Regis, qua quis per juramentum legalium hominum de vicineto eatenus amerciandus est, ne aliquid de suo honorabili contenemento amittat.

(g) Lib. 8. fo. 59. Beechers Case. F. N. B. 76.
(h) Glanv. lib. 9. cap. 11. Magna Charta cap. 14. Fleta lib. 2. c. 43. & 60. & lib. 1. cap. 43. Bract. lib. 3. tol. 116.

(i) The cause of an amerciament in plea real, personal, or mixt, (where the King is to have no fine) is, for that the Tenant or Defendant ought to render the demand (as he is commanded by the Kings writ) the first day; which if he do, he shall not be amerced: so as for the delay that the Tenant or Defendant doth use he shall be amerced. (k) And albeit the amerciament cannot be imposed, nor the King fully intituled thereunto, until judgment be given, because by the judgment the wrong is discerned; yet a pardon before judgment, after judgment given, shall discharge the party, because the original cause, viz. the delay, &c. is pardoned. (l) What then if a Præcipe be brought against an Infant, and hanging the plea he cometh of full age?

(i) 22 E. 3. 1, & 2. 14 E. 3. amerciam. 16. 8 R. 2. ibid. 26, &c.
(k) Pl. Com. 401. Coles Case. 37 H. 6. 21. Lib. 5. tol. 49. Vaughans Case.
(l) Vaughans Case ubi supra. Beechers Case ubi supra.

il serra de ceo endite a le suit le Roy; & sil soit de ceo attaint, il serra pur ceo un grievous fine & ransome al Roy. Mes il semble que villeine navera pas per le ley un appeale de Mayhem envers son Sir; car en appeale de Mayhem home recovera forsq; damns. Et si le villeine en ceo cas recovera damns envers son Seignior, & ent avoit execution, le Seignior poit prender ceo que le villeine avoit en execution de le villeine, & issint le recoverie voide, &c.

he shall of that be indicted at the Kings Suit; and if he be of that attainted, he shall for that make grievous Fine and Ransome to the King. But it seemeth that the villein shall not have by the Law any Appeal of Mayhem against his Lord; for in Appeal of Mayhem a man shall recover but his damages. And if the Villein in that case recover damages against his Lord, and hath thereof execution, the Lord may take that the Villein hath in execution from the villein, and so the recovery is void, &c.

He

he ſhall be amerced for the delay after his full age. So likewiſe if the Demandant or Plaintiff be Nonſuit, or Judgment given againſt him, he ſhall be likewiſe amerced pro falſo clamore.

(m) And for the payment of this amerciament, the Demandant or Plaintiff, &c. ſhall find pledges; and thoſe Demandants or Plaintiffs that ſhall find no pledges (as the King, the Queen, an Infant, &c.) ſhall not be amerced. And therefore when ſuch are Demandant or Plaintiff, the Writ ſhall not ſay, Si Rex, &c. fecerit te ſecurum de clamore ſuo proſequendo.

(m) F.N.B. 31. fol.47. c. & 101. a. Bract. lib. 4. fol.254. 17 E.3.75. 18 E.3. 2.Br. tit. amerciam.53.43 Aſſ. 45.&c.

(n) If a Writ do abate by the act of the Demandant or Plaintiff, or for matter of form, the Demandant or Plaintiff ſhall be amerced; but if it abate by the act of God, as by the death of one, where there is two, or the like, there ſhall be no amerciament. And to an amerciament impriſonment belongeth not, as it doth to a fine or ranſome. If you deſire to read more of fines and amerciaments, Vide lib.8.fol.38,39,&c. Greſleys caſe, & lib.11.fol.43,44. Godfreys caſe.

(n) Beechers caſe, lib. 8. fol. 60. b.

(o) It is to be known that Wit, Wita, is an old Saxon word, and ſignifieth an amerciament; as Fledwite an amerciament for fleeing or being a fugitive, and ſo is Flemiſwite, Blodwite an amerciament for drawing of blood, Ferdwite concerning warfare, and ſo Letherwite, Childwite, Wardwite, and the like. Sometimes it ſignifieth forfeiture, ſometime freedom or acquital.

(o) Fleta lib. 1. cap. 43. Stat. de expoſit. verborum.

(p) And Bote is alſo an ancient Saxon word, and ſometime ſignifieth amerciament, or compenſation, as Theftbote, Manbote; or freedom from the ſame, as Brigbote, Caſtlebote, Burghbote.

(p) Lamb. explication of Saxon words. Leges Inæ, cap. 19.

Wera or Were(q) ſometime ſignifieth amerciament or compenſation; but properly Wera Anglice idem eſt in Saxonis lingua, vel pretium vitæ hominis appretiatum. Which and the like words you ſhall often read in ancient Charters.

(q) Lamb. ubi ſupra. Flet. lib. 1. cap. 43.

¶ *Ranſome.* (r) Redemptio is here taken for a grand ſumme of money, for redeeming of a great Delinquent from ſome heinous crime, who is to be captivate in priſon until he payeth it: ſome hold it to amount to his whole eſtate, and others hold that ranſome is a treble fine. (s) But in legal underſtanding a fine and ranſome are all one, for upon the ſtatute of Marlebridge cap. 3. upon theſe words, Non ideo puniatur Dominus per Redemptionem;

(r) Dier 6 Eliz. 232.

(s) See the Second part of the Inſtitutes, Merlbr. cap. 3.

(t) The Tenant ſhall not have (where the Lord diſtraineth within his fee where nothing is behind) an Action of Treſpaſſe Quare vi & armis againſt his Lord, for therein the Lord ſhould be puniſhed by redemption, that is, by fine, and in that action the fine is very ſmall. And this is manifeſt by many Authorities in all ſucceſſion of ages: and this appeareth by our Author in this place, for he ſaith, Il ferra pur ceo un grievous fine & ranſome. Where fine and ranſome muſt of neceſſity in his opinion be taken for all one: for if the fine and ranſome were divers, then ſhould the party that mayhemed the Villein pay two ſummes, one for a fine, and another for a ranſome, which never was done. And aptly a redemption and a fine is taken to be all one; for by the payment of the fine he redeemeth himſelf from impriſonment that attendeth the fine, and then there is an end of the buſineſſe.

(t) 5 H.7. 10. 48 E.3. 5,6. 41 E.3. 26. 44 E.3. 13. 2 H.4. 4. 11 H.4. 78. 1 H.6.6. 9 H.7. 14. 8 E.4.15. 10 E.4. 7. 20 E.4.3. 21 E.4.3. Mich. 17 & 18 Eliz. Bevels caſe, lib. 4. fol. 11, & lib.9. fol. 76. Combs caſe.

It ſignifieth properly a ſumme of money paid for the redemption of a captive, and is compounded of re and emo, that is, to redeem or buy again. And it is to be known, that (u) by the ancient Law of England, if the Defendant in an appeal of Mayhem had been found guilty, the Judgment againſt the Defendant had been, that he ſhould loſe the like member that the Plaintiff loſt by his means; as if the Plaintiff had loſt an hand, the Defendant alſo ſhould loſe one, & ſic de cæteris: In reſpect whereof the Writ ſaid, (w) Felonice mayhemavit, for that the Defendant ſhould loſe a member.

(u) 40 Aſſ. 9. Mirror cap. 4. & cap.5. ſect. 18. Britton cap.25. fol. 48. Bract. lib. 3. fol.144,145. Flet.lib.1.cap.38.

(w) Bract. ubi ſupra. Britt. cap.5. fol. 77. b.

Always at the Common Law, when the Defendant ſhould loſe life or member, the Writ ſaid, Felonice, &c. And now albeit the Law be changed, (for at this day the Plaintiff ſhall, as our Author ſaith, recover but damages) yet the Writ of Appeal ſaith ſtill, Felonice.

Note, the life and members of every ſubject are under the ſafeguard and protection of the King; for, as Bracton (x) ſaith, Vita & membra ſunt in poteſtate Regis. And therewith agreeth a notable Record, Paſch. 19 E 1. Coram Rege Rot. 36. Northt. Vita & membra ſunt in manu Regis, to the end that they may ſerve the King and their Country when occaſion ſhall be offered. May, the Lord of the Villein for the cauſe aforeſaid cannot mayheme the Villein, but the King ſhall puniſh him for mayheming of his Subject (for that hereby he hath diſabled him to do the King ſervice) by fine, ranſome, and impriſonment until the fine and ranſome be paid. So as there is a manifeſt diverſity betwixt a ranſome and an amerciament. For ranſome is ever when the Law inflicteth a corporal puniſhment by impriſonment, (and ſo is alſo a fine;) but otherwiſe it is of an amerciament, as hath been ſaid. And (y) Ancients have ſaid, that Ranſome neſt forſque redemption de pain corporel per fine des deniers. This offence of mayheme is under all felonies deſerving death, and above all other inferiour offences, ſo as it may be truly ſaid of it, that it is, Inter crimina majora minimum, & inter minora maximum. And in my Circuit in Anno 11. Jacobi Regis in the County of Leiceſter, one Wright, a young, ſtrong, and luſty

(x) Bract. lib. 1. fol. 6. Paſch. 19 E. 1. coram Rege, Rot. 36. Northt.

(y) Mirr. cap. 5. ſect. 1. & 3.

Rogue, to make himſelf impotent, thereby to have the more colour to beg or to be relieved without putting himſelf to any labour, cauſed his companion to ſtrike off his left hand; and both of them were indited, fined and ranſomed therefore, and that by the opinion of the reſt of the Juſtices, for the cauſe aforeſaid.

¶ *Voide, &c.* Here by (&c.) is implied a maxim in Law, Quod inutilis labor & ſine fructu non eſt effectus Legis. And again, Non licet, quod diſpendio licet. And, Sapiens incipit a fine. And, Lex non præcipit inutilia. (z) Therefore the Law forbidden ſuch recoveries whoſe ends are vain, chargeable and unprofitable.

(z) Vide ſect. 273. & 578.

Sect. 195.

¶ D*Emandant*, Petens, is he which is Actor in a reall Action, becauſe he demandeth Lands, &c. And Plaintife, Querens, in actions perſonal and mixt, quia queritur de injuria, &c. Tenant, Tenens, in reall actions, and Defendant, Defendens, in actions perſonal and mixt.

¶ *Defence.* It cometh of the word defendo, ſo called of the manner of the pleading, viz. prædict' A. B. defendit vim & injuriam, &c.

For example, in a perſonal action brought by A. B. againſt C. D. the defence is, & prædictus C. D. defendit vim & injuriam quando, &c. & damna, & quicquid quod ipſe defendere debet, &c.

In this defence there be three parts to be conſidered. First, when he defendeth the wrong and the force, this hath a double effect, viz. to make himſelf party to the matter; and this is the reaſon that the defendant in this and the like actions can plead no plea at all before he makes himſelf party by this part of the defence, as it appeareth here by Littleton, that (a) if the Defendant will plead in diſability of the perſon of the Plaintiff, he muſt firſt make himſelf party by this firſt part of the defence. Neither can he plead to the juriſdiction of the Court without this part of the defence. Secondly, (b) By the defence of the Damages he affirmeth that the Plaintiff is able to ſue, and (upon juſt cauſe) to recover Damages. Thirdly, And by the laſt part, viz. and all that which he ought to defend, when and where he ought, he affirmeth the juriſdiction of the Court. Et ſic de ſimilibus. And of ſuch neceſſity is it for the Tenant or Defendant to make a lawful defence, as (c) albeit he appeareth and pleads a ſufficient bar without making defence, yet judgment ſhall be given againſt him.

(a) 40 E. 3. 36. 14 H. 6. 18. 35 H. 6. 12. 1 E. 4. 15.
(b) 29 E. 3. 23. 8 H. 6. 9.
(c) 36 H. 6. judgment 58.

(d) If Villenage be pleaded by the Lord in an action real, mixt or perſonal, and it is found that he is no villein; the bringing a Writ of Error is no enfranchiſement, becauſe thereby he is to defeat the former judgment: and if in the mean time the Plaintiff or Demandant bring an action againſt the Lord, he need make no proteſtation, ſo long as the Record remains in force, for at that time he is free, but the Lord ſhall be reſtored to all by a writ of Error.

(d) 18 E. 4. 6, & 7.

¶ I*Tem ſi un Villeine ſoit demandant en action real, ou Plaintife en action perſonal, envers ſõ Sñr, ſi le Sñr voile plede en diſabilitie de ſon perſon, il ne poit faire pleine defence, mes il defendera forſq; tort & force, & demandera judgement ſil ſerra reſpondue, & monſtre ſon matter maintenant cõm̃t il eſt ſon villein, & dõra judgment ſil ſerra reſpondue.*

ALſo if a Villein be demandant in an action real, or plaintiff in an action perſonal, againſt his Lord, if the Lord will plead in diſability of his perſon, he may not make plain defence, but he ſhall defend but the wrong and the force, and demand the judgment if he ſhall be anſwered, and ſhew his matter by and by how he is Villein, and demand judgment if he ſhall be anſwered.

Sect. 196.

¶ U*N eſt lou Villeine ſuiſt action, &c.* Littleton here

Bract. lib. 3. fol. 421. Britton cap. 49. fol. 125. Mirror cap. 2. ſect. 18.

¶ I*Tem 6 maners de homes y ſont queux ſils ſuont ac-*

ALſo there are ſix manner of men who if they ſue, judg-

tion,

tion, judgement poit eſtre demaund ſils ſerront reſpondus, &c. Un eſt, lou villeine ſuiſt action envers ſon Seignior, come en le cas avantdit.

ment may be demanded if they ſhall be anſwered, &c. One is, where a Villein ſueth an Action againſt his Lord, as in the caſe aforeſaid.

uſed in the ancient Authors of the Law. (f) Reſponſalis was he that was appointed by the Tenant or Defendant, in caſe of extremity and neceſſity, to alleage the cauſe of the parties abſence, and to certifie the Court upon what trial he will put himſelf, viz. the Combate, or the Country. So as his power was more then the Eſſoigner, which caſteth an Eſſoign only to excuſe the abſence of the party, as an eſtranger which caſteth a protection doth. For by the Common Law the Plaintiff or Defendant, Demandant or Tenant, could not appear by Attorney without the Kings ſpecial Warrant by Writ or Letters Patents, but ought to follow his Suit in his own proper perſon, (by reaſon whereof there were but few Suits.) (g) Abuſion eſt a reteiner Attorny ſans breve de la Chancery. And therefore Bracton ſaith truly, (h) Attornatus hæc omnia facere poteſt, (that is, plead all manner of pleas.) Eſt igitur magna differentia inter Attornatum & Reſponſalem. So as the Statutes that give the making of Attorneys have worn out Reſponſales. Now what manner of men Attorneys ought to be, or rather what they ought not to be, hear what Antiquity hath ſaid: (i) Attorneys poient eſtre touts ceux aux queux ley voile ſuffer: fems ne poient eſte Attorneys, ne enfans, ne ſerfs, ne nul que eſt en garde, ou autrement faut de foy, ne nul criminous, ne nul eſſoigne, ne nul que neſt à le foy le Roy, ne nul que ne poet eſte Counter, &c.

rehearſeth ſix kinds of diſabilities of the perſon, diſabling him to ſue any action real, perſonal, or mixt. 13 H.4. Surety 12. A Gardein ſhall diſable.

¶ *Sils ſerront reſpondus.* This is the legall concluſion of the Plea, when the plea is in diſability of the perſon. And of the verb reſpondere came reſponſalis, often

(f) Bract. lib.4. fol.212. b. & lib.5. fol.349. Fleta lib.6. cap.11. Glanvil lib.11. cap.1. Britton cap. 126. Vide W.1. cap.43. F.N.B.25. C. Regiſt. 9.

(g) Mirr. cap.5. Sect.

(h) Bracton ubi ſupra.

(i) Mirror cap.2. ſect.21.

Sect. 197.

¶ E ii. eſt, lou un home eſt utlage ſur action d Det ou Treſpas, ou ſur auter act ou Indictment; le Tenant ou defendant poit monſtre tout le matter de record, & lutlagarie, & demaunde judgement ſil ſerr reſpondue, pur ceo que il eſt hors de la ley de ſuer alcun action durant le temps que il ſoit utlage.

THE 2. is, where a man is outlawed upon an Action of Debt or Treſpaſs, or upon any other action or indictment; the Tenant or the Defendant may ſhew all the matter of Record, and the Outlawry, and demand judgement if he ſhall be anſwered, becauſe he is out of the Law to ſue an Action during the time that he is outlawed.

¶ *E 2. eſt, (k) lou un home eſt utlage, &c.* But theſe general words receive a diſtinction. viz. (l) If an Executor or an Adminiſtrator ſueth any Action, Utlary in the Plaintiff ſhall not diſable him, becauſe the Suit is in auter droit, that is, in the right of the Teſtator, and not in his own right. And for the ſame reaſon, (m) a Mayor and Commonalty ſhall have an action though the Mayor be outlawed. (n) In a Writ of Error to reverſe an Utlary, Utlary in that ſuit, or at any ſtrangers ſuit, ſhall not diſable the Plaintiff, becauſe if he in that action ſhould be diſabled, if he were outlawed at ſeveral mens ſuits, he ſhould never reverſe any of them. (o) In an Attaint, Outlary in the Plaintiff cannot be pleaded in diſability of the perſon. (p) Outlary in Cheſter or Durham ſhall not diſable the Plaintiff in any Court at Weſtminſter, &c. (q) Minor vero & qui infra ætatem 12 annorum fuerit utlagari non poteſt, nec extra legem poni, quia ante talem ætatem non eſt ſub lege aliqua, nec in decenna. (r) He that is abjured the Realm may be diſabled, for that he is extra legem, and yet he is not properly outlawed.

(k) Bracton lib.5. fol.421. Britton cap.22. fol.39. Mirr. c.3. de exceptions a provors, ca.4. de faults puniſhable.

(l) 21 E.4.49.b. 21 H.6. 30.b. 14 H.6.15.

(m) 12 E.4. fol.12.

(n) 7 H. 4. 40.

(o) 23 H.8. c.3. 2 H.7.7.

(p) Mirror cap.3. acc. 12 E.4.16. 33 H.6. cap. 2.

(q) Bract. lib.3. fol.125. 3 H.5. utlagary 11. 38 E. 3. 5.

(r) Britton fol.39.

(ſ) 20 E.2. Coron.232. 19 Aſſ.p.10. 3 H.6.15.b. 37 H.6.23. 5 H. 7. 6 Eliz. Dier 228. F.N.B. 244. Stanf. Pl. Coron.105.

¶ *Monſtre tout le matter de record.* Here note two things: firſt, by this word (Monſtre,) that (ſ) when any man pleads an Utlary in diſability of the perſon, that he muſt

ſhew forth the Record of the Outlawry maintenant ſub pede ſigilli, (becauſe the Plea is but dilatory) unleſs the Record be in the ſame Court. But if he plead an Outlawry in bar, if it be denied, he ſhall have a day to bring it in.

(t) 28 Aſſ. 49. 12 E. 3. Utlagarie 3. M. 4 & 5 El. Dier 222. 38 E. 3. 13.

Secondly, (t) before the Defendant can diſable the Plaintiff, the Outlawry muſt appear of Record, and the Judgment after the Quinto exactus given by the Coroners in the County Court is not ſufficient, until the Writ of Exigent be returned, and the Outlawry appear of Record: which is manifeſt by Littletons own words, (viz.) Matter de Record, whereof ſee more hereafter, Sect. 503.

It is to be obſerved, that there be two kinds of appearances before the Quinto exactus, to avoid the outlawry; viz. an Appearance in deed, that is, to render himſelf, &c. and the other is by an appearance in Law, (u) that is, by purchaſing a Superſedeas out of the Court where the Record is, which is an appearance of Record: and therefore though it be not delivered to the Sheriff before the Quinto exactus, yet it ſhall avoid the Outlawry; and ſo are the books that ſpeak hereof to be intended.

(u) Trin. 44 El. in Com. Banc. inter Mere & Dolburie. 33 H. 6. 1. 11 H. 4. 34. Dier 3 Eliz. 192. 5 Eliz. 225. 4 H. 4. fe 1. caſe. 8 H. 4. f. 7. 37 H. 6. 17. 33 E. 3. Err. 77. 21 H. 6. 20.

(w) If a man be outlawed at the ſuit of one man, all men ſhall take advantage of this perſonal diſability. And ſo it is in caſe of Alien nee, and of Excommengement: but otherwiſe it is in caſe of villenage, for that diſability is only given to the Lord.

(w) 33 H. 6. 19, b. &c.

¶ *Durant le temps que il eſt utlage.* (x) If the Defendant plead an Outlawry in the Plaintiff, in diſability of his perſon, and the Plaintiff after that plea pleaded purchaſe a Charter of Pardon, becauſe the Charter hath reſtored him to the Law, the Defendant ſhall anſwer. So note, the diſability abateth not the Writ, but diſinableth the Plaintiff untill he obtaineth a Charter of Pardon, and ſo it appeareth here by Littleton.

(x) 44 E. 3. 27.

¶ *Judgment ſil ſerra reſpondue.* (y) If the ground or cauſe of the Action be forfeited by the Outlawry, then may the Outlawry be pleaded in barr of the Action, as in an Action of Debt, Detinue, &c. But in reall Actions, or in perſonal, where damages be incertain, (as in Treſpaſs of Battery, of Goods, of breaking his Cloſe, and the like) and are not forfeited by the Outlawry, there outlawry muſt be pleaded in diſability of the perſon.

(y) 9 El. Dier 262. 7 H. 4. 4. b. Stan. Pl. Coron. 188. Lib. 5. fol. 109. in Foxleys Caſe. 28 E. 3. 92. 29 Aſſ. p. 47. & 3. 30 H. 6. 5.

(z) And it is to be obſerved, that in the Reign of King Ælfred, and untill, and a good while after, the Conqueſt, no man could have been outlawed but for Felony, the puniſhment whereof was death: but now the Law is changed, as it appeareth by that which hath been ſaid. And hereby you ſhall underſtand old Books and Records which ſay, that an outlawed man had Caput lupinum, becauſe he might be put to death by any man, as a Wolf that hateful beaſt might. (*) Utlagatus & waiviata capita gerunt lupina, quæ ab omnibus impunè poterunt amputari: merito enim ſine Lege perire debent, qui ſecundum Legem vivere recuſant. And another ſaith, (a) Utlage pur felonie teigne leu pur loup, & eſt criable Woolfeſhered, pur ceo que loup eſt beaſt hay de tours gents; & de ceo en avant liſt al aſcun de le occire ou foer del loup, dont cuſtome ſoloit eſte de porter les teſtes al chiefe lieu del Countie, ou de la Franchiſe, & ſoloit leu avoire dun marke del Countie pur cheſcun teſte de utlage & de loup. And this agreeth with the Law before the Conqueſt; (b) Utlagatus lupinum gerit caput, quod Anglicè Woolfeſhead dicitur; & hæc eſt Lex communis & generalis de omnibus utlagatis. (c) But in the beginning of the reign of King Ed. 3. it was reſolved by the Judges, for avoiding of inhumanity, and of effuſion of Chriſtian bloud, That it ſhould not be lawfull for any man but the Sheriff only (having lawful warrant therefore) to put to death any man outlawed, though it were for Felony, and if he did, he ſhould undergo ſuch puniſhments and pains of death as if he had killed any other man: and ſo from thenceforth the Law continued until this day. (Nota, Woolfeſhead and Wulferford is all one.) (*) And after in Bractons time, and ſomewhat before, Proceſs of Outlawry was ordained to lie in all Actions that were Quare vi & armis, which Bracton calleth Delicta, for there the King ſhall have a Fine. But ſince, by divers Statutes, Proceſs of Outlawry doth lie in Account, Debt, Detinue, Annuitie, Covenant, Action ſur le Statute de 5. Rich. 2. Action ſur le Caſe, and in divers other Common or Civil Actions. But now let us hear what Littleton will ſay unto us.

(z) Mir. c. 1. ſect. 3. & c. 3 & 4. ſæpe. cap. 5. ſect. 1.

(*) Fleta lib. 1. cap. 27. Bract. lib. 5. fol. 421. Brit. fol. 20. b.

(a) Mir. cap. 4. ſect. defaults puniſhable.

(b) Lamb. fol. 128.

(c) 2 Aſſ. P. 3. 2 E. 3. tit. Coron. 148.

(*) Bract. lib. 5. fol. 421. 8 H. 6. 9. b. 40 E. 3. 5. 35 H. 6. 6. 40 E. 3. 2.

Sect. 198.

¶ *Alien*, (a) Alienigena, is derived from the Latine word Alienus, and according

(a) Bract. l. 5. fo. 415. 427. Mir. c. 1. ſect. 3. c 5. ſect. 1. & c. 3. excep. 2 provors. Fleta. l. 6. c. 47. Brit. fol. 29. 13 E. 3. Bre. 677. 25 E. 3. de Natis ultra mare. 31 E. 3. Coſtumes 5. 42 E. 3. 2. 9 E. 4. 7.

¶ LE 3. eſt, un Alien que eſt nor hors de la ligeance

THE third is, an Alien which is born out of the ligeance of noſtre

noſtre Seignior le Roy ſi tiel alien voile ſuer un Action reall ou perſonall, le Tenant ou Defendant poit dire, que il fuit née en tiel pais que eſt hors de la ligeance le Roy, & demaund judgement ſi il ſerra reſpondue.

our Sovereign Lord the King; if ſuch alien will ſue an action real or perſonal, the tenant or defendant may ſay, that he was born in ſuch a Country which is out of the Kings Allegeance, and aske Judgment if he ſhall be anſwered.

to the Etymology of the word it ſignifieth one born in a ſtrange Country, under the obedience of a ſtrange Prince or Country, (and therefore Bracton ſaith, that this exception, Propter defectum Nationis, ſhould rather be, Propter defectum ſubjectionis) or, as Littleton ſaith, (which is the ſureſt) out of the ligeance of the KING. Note, here Littleton ſaith not Hors del realme, but Hors de ligeance; for he may be born out of the Realm of England, yet within the ligeance. And he that is born within the Kings ligeance is called ſometime a Denizen, quaſi deins nee, born within, and thereupon in Latine called Indigena, the Kings Liegeman, for Ligeus is ever taken for a natural born Subject. But many times in Acts of Parliament Denizen is taken for an Alien born, that is infranchiſed or denizated by Letters Patents, whereby the King doth grant unto him. (b) Quod ille in omnibus tractetur, reputetur, habeatur, teneatur, & gubernetur, tanquam ligeus noſter infra dictum Regnum noſtrum Angliæ oriundus, & non aliter, nec alio modo. But the King may make a particular Denization: (c) As he may grant to an Alien, Quod in quibuſdam Curiis ſuis Angliæ audiatur ut Anglus, & quod non repellatur per illam exceptionem, quod ſit alienigena & natus in partibus tranſmarinis, to enable him to ſue onely. The ſeveral ſenſes of which word muſt be gathered ex antecedentibus, adjunctis, & conſequentibus; and they that take him in that ſenſe derive the word from Donaiſon, (i.) Donatio, becauſe his freedom is given unto him by the King.

11 H.4.26. 14 H.4.19,20. 3 H.6.55. 21 H.6.38. Stanf. Pl. Cor. 197. a. Lib.7. fol.5. Calvins caſe. Pl. Com.468. per Sanders. Vide Sect.439,440,441.

(b) 9 E.4. f.8. Pl. Com.130.b.

(c) Rot. Parl. 22 E.1. Elias de Daubenie.

There is another kind, and that is an Alien naturalized, and that muſt be by Act of Parliament. And this Alien naturalized to all intents and purpoſes is as a natural born Subject, and differeth much from Denization by Letters Patents: for if he had iſſue in England before his Denization, that iſſue is not inheritable to his father; but if his father be naturalized by Parliament, ſuch iſſue ſhall inherit. So if an iſſue of an Engliſhman be born beyond Sea, if the iſſue be naturalized by Act of Parliament, he ſhall inherit his fathers lands; but if he be made Denizen by Letters Patents, he ſhall not. And many other differences there be betwæn them.

¶ *Ligeance*, à Ligando, being the higheſt and greateſt obligation of duty and obedience that can be. Liegeance is the true and faithful obedience of a Liegeman or Subject to his Liege Lord or Sovereign. Ligeantia eſt vinculum fidei: ligeantia eſt legis eſſentia.

Vide Calvins caſe, ubi ſupra.

Ligeantia Domino Regi debita eſt duplex.

- Perpetua.
  1. Originaria, ſive naturalis, ſive nata: (d) and this is always abſolute and inherent inſeparable. Nemo patriam in qua natus eſt exuere, nec ligeantiæ debitum ejurare poſſit.
  2. Data, aut per denizationem, aut per naturalizationem, (ut ſupra dictum eſt.) Iſta ligeantia per denizationem poteſt eſſe ſub conditione.
- Temporanea, aut
  - Localis, quia quilibet alienigena qui in hoc Regno ſub protectione Regis degit Domino Regi ligeantiam debet. Thus if he be indicted of high Treaſon, the Indictment ſhall ſay, (e) Contra Ligeantiæ ſuæ debitum: & ideo dicitur temporanea & localis, quia non durat niſi quouſque infra Regnum moratur.
  - Limitata, as when one is made Denizen for life, or in Tail. (f) But one cannot be naturalized either with limitation for life, or in tail, or upon condition: for that is againſt the abſoluteneſs, purity, and indebility of naturall Allegeance.

(d) 13 El. Dier f.301.b. Doctor Stories caſe.

(e) 3 & 4 P. & M. Dy.144. L.7.f.6. &c. Calvins caſe.

(f) 9 E.4.7. Calvins caſe, ubi ſupra.

* An Abbot, Prior, or Priorels Alien, ſhall have Actions reall, perſonal, or mixt, for any thing concerning the poſſeſſions or goods of his Monaſtery here in England, though he be an Alien born out of the Kings Ligeance, becauſe he bringeth it not in his own Right, but

* 13 E.3. br. 264. 20 E.3. Annuity 24. 17 E.3.23. 40 E.3.10. 27 Aſſ. 48. 14 H.4.27. 21 E.4.44. 21 H.7.7. Stanf. Prer. 54. Ecclet. de Carlile 35 E.1.

but in the right of his Monaſtery, and not in his natural, but in his politique capacity.

(b) Brac. 426, 427. 430. 8 E.3. 51. 5 E.2. Aiel 8. 33 E.3. Bre.677. 22 E.3. 14.20. 21 E. 3. Coinage 5. 42 E 3.2. 13 E.4.9. 11 H.4.26. 9 E.4.7. 19 E.4.7. 20 E.4.6. 13 E.4.9,10. 32 H.6.23. 38 H.8. Br. Denizen 10. 1 E. 6. Nonhab. Br.13. & 62. Vide 4 H.3. Dower 179. 6 E.3. 263. 31 H. 6.cap.4. Livre de Entries in eject.7. 6 H.8. Dier 2. 6 H.7.15. * 29 E.3. Br. Denizen 15.

¶ *Reall ou perſonall.* (b) In this caſe the Law doth diſtinguiſh between an Alien that is a Subject to one that is an enemy to the King, and one that is ſubject to one that is in league with the King: and true it is, that an Alien enemy ſhall maintain neither reall nor perſonal Action, Donec terræ fuer' communes, that is, untill both Nations be in peace; but an Alien that is in league ſhall maintain perſonall actions; for an Alien may trade and traffique, buy and ſell, and therefore of neceſſity he muſt be of ability to have perſonall actions, but he cannot maintain either reall or mixt actions. An Alien that is condemned in an information ſhall have a Writ of Error to relieve himſelf: Et ſic de ſimilibus.

* If an Alien be made a Prior or Abbot, the plea of Alien nee ſhall not diſable him to bring any reall or mixt action concerning his houſe, becauſe he is in auter droit, as before is ſaid.

Vide Stanf. Pl. Cor.197. a.

¶ *Hors del ligeance noſtre Seignior le Roy.* Here Littleton doth not ſay, out of the Realm, or beyond the Sea, (as he doth, Sect. 439, 440, 441. 677.) but out of the Ligeance; for (as hath been ſaid before) a man may be born out of the Realm, viz. of England as in Ireland, Jerſy, and Gernſey, &c. and yet ſaying he is not born out of the Ligeance of the King, as Littleton here ſpeaketh, he is no Alien. But hereof there is ſo much and ſo plentifully ſpoken in our Books, and eſpecially in the caſe of Calvin ubi ſupra, as this ſhall ſuffice.

(i) Livre de Entries Alien.1.

¶ *Et demaund judgement ſil ſerra reſpondue.* So as the Tenant or Defendant ſhall neither plead Alien nee to the Writ or to the Action, but indiſability of the perſon, as in caſe of Villenage and Outlawry before. (i) And Littleton is to be intended of an Alien in league; for if he be an Alien enemy, the Defendant may conclude to the Action.

Sect. 199.

¶ LE 4. eſt, un home q̄ p judgement done envers luy ſur un briefe de Præmunire facias, &c. eſt hors de protection le Roy, ſi il ſuiſt alcun action, & le Tenant ou le def. mſa tout le Record envers luy, il poit demaund judgement ſil ſerra reſpondue; car la ley le Roy & les biens le Roy ſont les choſes per queux home eſt protect & aide, & iſſint durant l'temps que home en tiel cas eſt hors de la protection le Roy, il eſt hors de eſtre aide ou protect per la ley le Roy, ou per bꝛe le Roy.

THe 4. is, a man who by judgment given againſt him upon a Writ of *Præmunire facias, &c.* is out of the Kings protection; if he ſue any action, and the Tenant or Defendant ſhew all the Record againſt him, he may ask judgment if he ſhall be anſwered; for the Law and the Kings Writs be the things by which a man is protected and holpen, and ſo during the time that a man in ſuch caſe is out of the Kings protection, he is out of help and protection by the Kings Law, or by the Kings Writ.

For Statutes,
Vide 35 E. 1. ſtat. de Carliſle. 25 E.3. ca.22. 25 E.3. ſtat. de proviſors. 27 E.3.ca.1. 38 E.3. ca.3. 2 R. 2. c.12. 3 R.2.c.3. 12 R.2. ca.5. 16 R.2. c.5. 2 H.4. c.3, & 4. 6 H.4. c.1. 24 H.8. ca.12. 25 H.8. cap.19,20. 26 H.8.c.16. 1 Eliz. c.1. 5 Eliz. c.1. 13 Eliz. c.1,2.8. 27 Eliz.c.2. 39 Eliz. c.18.

For Precedents,
Vide Mich. 29 E.3. coram Rege in Theſaur. Paſch. 44 E.3. ibid. Melborns caſe. Mich. 38 H.6. Ibid. the caſe of Rich. Beauchamp and others. Hill. 25 H. 8. coram Reg. the caſe of Nicke Biſhop of Norwich. Trin. 36 H.8. Rot. 9. Coram Rege, the caſe of the Biſhop of Bangor. Mich.26 & 27 El. coram Rege, Perrot againſt D. Bevance & others. Book of Entries, fol.429, & 430. & ibid. Mich. 9 H.7. fol.23.

¶ *Præmunire.* Some hold an opinion that the Writ is called a Præmunire, becauſe it doth fortify Juriſdictionem jurium regiorum Coronæ ſuæ, of the Kingly Laws of the Crown, againſt foreign juriſdiction, and againſt the uſurpers upon them, as by divers Acts of Parliaments appears. But in truth it is ſo called of a word in the Writ, for the words of the Writ be, Præmunire facias præfatum A. B. &c. quod tunc ſit coram nobis, &c. where Præmunire is uſed for præmonere, and ſo do divers interpreters of the Civil and Canon Law uſe it; for they are præmuniti that are præmoniti. By the Statutes before quoted in the margent you ſhall perceive what ſtatutes were made before Littleton wrote, and what have been ordained ſince, to make offences in danger of a Præmunire.

Book-Caſes.
21 E.3.48. b.18 H.6. 6. 9 E.4.2. 35 E. 3.7. 24 H.8. tit. Præmunire 16. 10 H.4.12. 27 E.3.84. 6 H.7.14. 44 E.3.36.

¶ *Hors del protection le Roy.* The judgement in a Præmunire is, that the Defendant ſhall be from thenceforth out of the Kings protection, and his Lands and Tenements, Goods and Chattels, forfeite

forfeited to the King, and that his body ſhall remain in priſon at the Kings pleaſure. So odious was this offence of Præmunire, that a man that was attainted of the ſame might have been ſlain by any man without danger of Law, becauſe (k) it was provided by Law, that a man might do to him as to the Kings enemy, and any man may lawfully kill an enemy. But Queen Elizabeth and her Parliament, * liking not the extream and inhumane rigour of the Law in that point, did provide that it ſhould not be lawful for any perſon to ſlay any perſon in any manner attainted in or upon any Præmunire, &c. Tenant in Tail is attainted in a Præmunire, he ſhall forfeit the land but during his life: for albeit the ſtatute of 16 R. 2. c. 5. enacteth, that in that caſe their lands and tenements, goods and chattels, ſhall be forfeit to the King, that muſt be underſtood of ſuch an eſtate as he may lawfully forfeit, and that is during his own life. And theſe general words do not take away the force of the ſtatute De donis conditionalibus: but he ſhall forfeit all his Fee ſimple lands, eſtates for life, goods and chattels. And ſo was it reſolved in Trudgins caſe.

11 H. 7. tit. Præmunire, F. 5. 17 H. 7. Juſtice Spilmans in Turberviles caſe, Kelwey fol. 195. Doct. & Stud. lib. 2. cap. 32. Brook, tit. Præmunire 21. Temps E. 6. Biſhop Barloes caſe.

(k) 24 H. 8. Brook Coron. 156.

* 5 Eliz. cap. 1.

Hill. 12 El. Trudgins caſe reſolved per les Juſtices 7 H. 4. 20. Simoti Beverleys caſe.

¶ *Car la Ley le Roy & les brieſes le Roy, &c.* There be three things as here it appeareth, whereby every ſubject is protected, viz. Rex, Lex, & Reſcripta Regis, the King, the Law, and the Kings Writs. The Law is the Rule, but it is mute: The King judgeth by his Judges, and they are the ſpeaking Law, Lex loquens: The proceſs and the execution, which is the life of the Law, conſiſteth in the Kings Writs. So as he that is out of the protection of the King cannot be aided or protected by the Kings Law, or the Kings Writ. Rex tuetur legem, & lex tuetur jus. (l) Beſides men attainted in a Præmunire, every perſon that is attainted of high treaſon, petit treaſon, or felony, is diſabled to bring any action, for he is * Extra legem poſitus, and is accounted in Law Civiliter mortuus.

(l) 4 E. 4 8. 1 E. 4. 1. b. 30 E. 3. 4. 8 Eliz. Dier 243. * Mich. 9 E. 3. coram Rege, Rot. 84. Warw.

It is to be underſtood, that there is a general protection of the King, whereof Littleton here ſpeaketh, and this extends generally to all the Kings loyal Subjects, Denizens and Aliens, within the Realm, whoſe offences have not made them uncapable of it, as before it appeareth: And there is a particular protection by Writ, which is one of the Kings Writs that Littleton here ſpeaketh of. This particular protection is of two ſorts, one, to give a man immunity or freedome from actions or ſuits; the ſecond, for the ſafety of his perſon, ſervants and goods, lands and Tenements, whereof he is lawfully poſſeſſed, from violence, unlawful moleſtation or wrong. The firſt is of right, and by Law; the ſecond are all of grace, (ſaving one) for the general protection implieth as much. Of the firſt ſort ſome are Cum clauſula (volumus,) ſo called, becauſe the Writ hath this word (volumus,) in it, viz. Volumus quod interim ſit quietus de omnibus placitis & querelis, &c. And the other a protection Cum clauſula (nolumus,) ſo called for the like reaſon. Of protections Cum clauſula (volumus) for ſtaying of pleas and ſuits, there be four kinds, viz. Quia proſecturus, (ſo called, by reaſon they are part of the words of the Writ.) 2. Quia moraturus, (ſo named for diſtinction for the like cauſe.) 3. Quia indebitatus nobis exiſtit, of the matter. 4. When any ſent into the Kings ſervice in war is impriſoned beyond Sea. The former are for ſtaying of actions and ſuits in general. The third is for ſtaying of ſuits of the Subject for debts and duties due by the Kings debtor to them. Of the fourth you ſhall read hereafter in this place. For the former two theſe nine things are to be obſerved. Firſt, for what cauſe they are to be granted. 2. For what perſons they are allowable. 3. Three-fold time is to be conſidered; viz. the time of the purchaſe of them, the time of the continuance of them, and the time when they ſhall be caſt. 4. In what place the ſervice is to be performed. 5. In what actions theſe protections are allowable. 6. Under what ſeal and to whom they are directed. 7. Who is to allow or diſallow of them. 8. By whom they are to be caſt, and in what manner. 9. How upon juſt cauſe they may be repealed or diſallowed. I muſt but point at theſe matters, to make the ſtudious Reader capable of them, and refer him to the Books and other Authorities at large, being excellent points of learning.

As to the firſt, it is of two natures: the one concerns ſervices of war, as the Kings Souldier, &c. the other wiſdom and counſel, as the Kings Imbaſſador or Meſſenger Pro negotiis regni. Both theſe being for the publique good of the Realm, private mens actions and ſuits muſt be ſuſpended for a convenient time; for Jura publica anteferenda privatis; and again, Jura publica ex privatis promiſcuè decidi non debent. (a) And the cauſe of granting of the protection muſt be expreſſed in the protection, to the end it may appear to the Court that it is granted pro negotiis regni & pro bono publico, (b) or, as ſome others ſay, pur le common profit del realm. And Britton ſaith, Noſtre ſervice, ſicome eſtre en noſtre force, & le defence de nous & de noſtre people, &c. * A man in execution in ſalva cuſtodia ſhall not be delivered by a Protection.

(a) 19 H. 6. 39. 3 H. 6. tit. protection 2. 13 R. 2. cap. 16.

(b) Mirror cap. 3. Sect. Britton fol. 281. Fleta lib. 6. cap. 7, 8, &c. Bracton.

* 5 Mar. Dier 162.

(c) To the ſecond, Theſe Protections are not allowable only for men of full age, but for men within age, and for women, as neceſſary attendants upon the Camp, and that in three caſes, Quia lotrix ſeu nutrix, ſeu obſtetrix.

(c) 19 H. 6. 51. 30 E. 3. 21. F. N. B. 28 l. 11 E. 3. Rot. pat. 3. part, for the Counteſſe of Warw.

(d) Corporations aggregate of many are not capable of theſe two protections, either Proſecturæ or Moraturæ, becauſe the Corporation it ſelf is indiviſible, and reſteth onely in con-

(d) 30 E. 3. 1. 21 E. 4. 38. 21 E. 3. 27.

consideration of Law. (e) Protection for the husband shall serve also for the wife.

(f) Albeit the Vouchee, Tenant by reseit, Prier in aid, or Garnishee, be no parties to the Writ, yet before they appear a Protection may be cast for them; because when the Demandant grants the Vouchee or receit, in judgment of Law they are made privy: but if the Demandant counterplead the Vouchee or receit, then untill it be adjudged for them, & so they privy in Law, a Protection cannot be cast for them. And so it is of the Garnishee, a Protection may be cast for him at the day of the return of the Scire fac. (g) No Protection can be cast for the Demandant or Plaintiff, because the Tenant or Defendant cannot sue a Resummons or Re-attachment; but the Plaintiff onely that sued out the summons or attachment, &c. must in also the resummons or re-attachment. And so it is of an Actor in nature of a Plaintiff, &c. as the Garnishee after appearance, and an avowant, and the like. (h) An Officer of the Kings receit, or any other Officer in any Court of Record, whose attendance is necessary for the Kings service, or administration of Justice, being sued, cannot have a Protection cast for him.

(i) In every action or plea, reall or mixt, against two, (where Protection doth lye) a Protection cast for the one doth put the plea without day for all. So it is in debt, detinue, and account. But in tresspasse, or any action in nature of tresspasse, which is in Law several, where every one may answer without the other, there a Protection cast for the one shall serve for him onely, unlesse they joyn in pleading: or if they plead several pleas, and one Venire facias is awarded against all, there a Protection cast for one shall put the plea without day for all; and therefore in former times the Plaintiff used to sue out several Venire fac' in those cases for fear of a Protection, &c.

(k) As to the thirefold time. First, a Protection Prosecuturæ regularly must not be purchased hanging the plea: but this faileth when he goeth in the Kings service in a Voyage royal: and that is twofold, either touching warr, and that onely is when the King himself or his Lieutenant, that is Prorex, goeth; or when any goeth in the Kings Imbassage, pro negotio regni, or for the marriage of the Kings daughter, or the like; this also is called a Voyage royal. But a Protection Moraturæ may be purchased, and cast, pendente placito.

(l) Regularly a Protection cannot be cast, but when the party hath a day in Court, and when if he made default, it should save his default: therefore when execution is to be granted against body, lands, or goods, no Protection can be cast, because the Defendant hath no day in Court. If a Protection be cast at the Nisi prius for one, if before the day in banke it be repealed by Innotescimus; yet because it was once well cast, it shall save his default: but if the Protection be disallowed, either for variance, or that it lay not in the action, or the like, there it shall turn to a default.

(m) If a man hath a Protection, and notwithstanding plead a plea, yet at another day of continuance after that a Protection may be cast; so at a day after an Exigent: but after appearance he cannot cast a Protection in that Term untill a new continuance be taken.

(n) Thirdly, No Protection either Prosecuturæ or Moraturæ shall endure longer then a year and a day next after the teste or date of it. And so it is of an Essoigne de service le Roy. If a Protection bear teste 7. die Januarii, and have allowance pro uno anno, the resummons, reattachment or regarnishment may be sued 8. Januarii the next year, and yet that is the last day of the year.

And where Britton, treating of an Essoign beyond the Græcian Sea in a Pilgrimage, &c. saith thus, (o) Ascun gent nequident se purchasent nous letters de protection patents durable à un an, ou à 2. ou à 3. ans, & jalameyns sont attorneys generals ausi per nous letters patents: & ceux font bien & sagement, car nul grand Seignior ne chivalier de nostre realme ne doit prender chemyn sauns nostre conge, car issint poet le realme remainer disgarny de sort gente.

Three things are hereupon to be observed. First, that this was a Protection of grace, whereof more shall be said hereafter. Secondly, that it was for safety of the great men of the Realm, and that they should make generall Attorneys, so as no actions or suits should be thereby stayed. Thirdly, (by the way) that great men could not passe out of the Realm without the Kings licence. (p) A Protection granted to one, &c. untill he returned from Scotland, was disallowed for the incertainty of the time.

(q) To the fourth, The Protection as well Moraturæ as Prosecuturæ must be regularly to some place out of the Realm of England, and that must be to some certain place, as super salva custodia Caliciæ, &c. and not to Carlisle or Wales, which are within the Realm, or to the like. But it may be to Ireland or Scotland, because they are distinct Kingdoms, or to Calice, Aquitaine, or the like: but a Protection, Quia moratur super altum mare, will not serve, not onely because (as some think) that mare non moratur, but for the incertainty of the place, and for that a great part of the sea is within the Realm of England.

(r) To the fifth, In some Actions Protections shall not be allowed by the Common Law, and in some actions they are ousted by Act of Parliament. Actions at the Common Law, as all Actions that touch the Crown, as Appeals of Felony, and Appeals of Mayhem. (s) So where

(c) 35 H.6.3. 43 E.3.23. 48 E.3.7. 4 E.5. protection 107.
(f) 45 E.3. protect.37. 3 H.6.18.30. 8 H.6.16. 9 H.6.36. 40 E.3.18. 32 E.3. protect.54. 21 E.3. 14 H.4.16. 45 E.3. tit. protect. 40. 14 E.3. protect.66.
(g) 24 E.3.26. 47 E.3.5. 5 H.5.5. 38 E.3.1. F.N.B.28.g. 20 E.2. protect.106. 22 H.6. 28. 9 H.6.36. 43 E.3.36. 17 E.3.24. 25 E.3.43. 24 E.3.26.
13 E.3. protection 71. 14 E.3. ibid. 65,63. 20 E.3. ibid.84.
(h) 7 H.4.3. 2.
(i) 19 E.3. protection 80,81. 32 E.3. ibid.55. 16 E.2.ib.77. 13 E.3.ib.70. 41 E.3. ib.95. 41 E.3.32. 42 E.3.9. 5 H.5.7. 3 H.4.15. 2 R.2. protect.45. 43 E.3. ib.31. 2 H.6.22. 21.H. 6.41. 38 E.3.12. 7 H.6.21. 33 E.3. protect.116. 4 H.4.4. 29 E.3.41. 45 E.3.24.28. 11 E.4.7. F.N.B. 28. k.
(k) 3 H.6. pr.c.2. 39 H.6.39. 44 E.3.12. 13 R.2. cap.16. 3 H.4.16. 11 H.4.7. 7 E.4.27. 28 H.6.1. 17 H.6. prot.56. 10 E.3.54. 13 E.3. amerciament 18. Lib.7. fol.7,8. Calvins case. 13 R.2. cap.16.
(l) 4 H.6.22. 17 E.3.76. 33 E.3. tit. protect. 115. 34 E.3. ib.124. 27 E.3.79. 29 E.3. prot.85,88. 2 E.4.15. 19 E.3. prot.82.79. 13 E.3. ibid. 72. 9 E.3.21. 3 H.6.55. 4 H.6. 22. 11 H.6.14. 14 H.6 22. 21 H.6.10. 27 H.6.4. 28 H.6.1. 35 H.6. 58. 44 E.3.2. 16. 48 E.3.8. 7 H.4.5. 14 H.4.23. 27 E.3 78.
(m) 22 E.3,4.16 E.3.prot.47. 44 E.3.16. 3 E.3. amerciam. 18. 34 E.3. Protection 123.
(n) 39 H.6. 39. F.N.B. fol.28. Fleta lib.6. cap.8. Temps E.1. grant cape 26.
(o) Brit.282,283. & 289. Fleta lib.6. cap.8. accord.

(p) 1 E.3.25.
(q) Lib.7.fol.8. Calvins case. 7 E.4.29. F.N.B. 38. c.g.h. 7 H.4.14 19 H.6.35. 38 H.6.3. 32 H.6. 3 R.2. Rot. Parliament. nu. 21. 22 E.4. prot. 18. 8 R.2. ib. 125, 11 H.4. 57. Regist. judic.14. 36 H.6. tit. protect.27. 6 R.2. ibid. 14. Regist. orig. 88. supe.
(r) Bract. lib. 5. 139, 140. Britton 181. Fleta lib.6. c. 7,8,&c. 14 E.2. protect. 109. 34 E.3. ibid.122. 19 E.3. ibid.78. 33 E.3. ib.99. 21 E.3.12.
(s) 10 H.6. protect.105.

where the King is sole party no protection is to be allowed; in like manner in a Decies tantum, where the King and the Subject are Plaintiffs: but in late Acts of Parliament Protections in personall actions are expressly ousted. A Protection may be cast against the Quæn, the Consort of the King.

In a Writ of Dower unde nihil habet no protection is allowable, because the Demandant hath nothing to live upon. Otherwise it is in a Writ of right of Dower. Likewise in a Quare impedit, or Assise of Warren prelcnement, a protection lieth not, for the eminent danger of the laps. Neither lieth a Protection in an Assise of Novel disseisin, because it is festinum remedium, to restore the Disseisee to his freehold, whereof he is wrongfully and without judgment disseised. 39 H.6.39. 43 E.3.6. & 32. 27 H.6.1. F.N.B. 28. 17 E 3.23.Lib.4. fo.35. Bozoms case. Bract. lib.5. fol. 139, 140.

(u) In a Quare non admisit a Protection is not allowable, because it is grounded upon the Quare impedit; and the like in a Certificate upon an Assise for the like reason, and sic de similibus. A Protection Quia profecturus is not allowable (as hath been said) in any Action commenced before the date of the Protection, unlesse it be in a Voyage Royal. (w) An Infant is vouched, and at the Pluries venire fac. a Protection was cast for the Infant, and disallowed, because his age must be adjudged by the inspection of the Court. (u) 13 E.3.tit. protection 52. 12 E.3. ibid.69. 31 E. 1. ibid. 112. (w) 19 E. 2. protect.111. 32 E.3. ibid. 54.

(x) By Act of Parliament no Protection shall be allowed in an attaint, (but at the Common Law a Protection for one of the Petit Jury had put the plea without day for all) nor in an Action against a Gaoler for an escape, nor for victuals taken or bought upon the voyage or service, nor in pleas of Trespass, or other contract made or perpetrated after the date of the same Protection. (x) 23 H.8.c.3.34 E.1. protection 38. 7 H.4.c.4. 1 R. 2. cap.8.

(y) In a Writ of Error brought by an Infant upon a fine levied, the Plaintiff sued a Scire facias against the Consulee, for whom a Protection was cast; and the Court examined the age of the Plaintiff, and by inspection adjudged him within age, and recorded the same, and then allowed the Protection; and this can be no mischief to the Plaintiff: whereupon it followeth, that albeit the Plaintiff dieth afterwards before the fine be reversed, yet after his age adjudged and recorded, his heir shall in that case reverse the fine for the nonage of his Ancestor. (y) 22 E.3 24. 31 E.3. protect.97. 1. 5 E.4.50. 35 H.6.43.46.8 E.4.8. 17 E. 3.22. 13 E.3. protect.73.

(z) And so it was resolved in the case of Kekewiche in a Writ of Error brought by him, by the opinion of the whole Court of the Kings Bench; otherwise it is if the Plaintiff dieth before his age inspected. (a) Pasch. 12 Ja. Regis, in the Kings Bench.

(b) Note, in judicial Writs, which are in nature of Actions, where the party hath day to appear and plead, there a Protection doth lie, as in Writs of Scire facias upon Recoveries, Fines, Judgments, &c. Albeit by the Statute of W. 2. Essoigns and other delays be ousted in Writs of Scire facias, yet a Protection doth lie in the same. So it is in a Quid juris clamat, and the like. But in Writs of Execution, as Habere facias seisinam, Elegit, Execution upon a Statute, Capias ad satisfaciendum, Fieri facias, and the like, there no Protection can be cast for the Defendant, because he hath no day in Court, and the Protection extendeth only ad placita & querelas, and must be allowed by the Court, which cannot be but upon a day of appearance. (b) 13 E.3. protect.72. Fleta l.2 c.12. 40 E.3.18. 48 E.3.18,19.37 H.6.32. 21 E.4.19. 15 H.7.8. 47 E.3.5. 17 E.3.68.14 E.3. protect.64. W.2. cap.45.

(c) In a Writ of Deceit brought against him that obtained and cast a protection upon an untrue surmise in delay of the Plaintiff, that protection is allowable. In an action brought upon the Statute of Labourers, a protection doth lie, & sic de similibus. (c) 20 E.3. protect.83.

(d) To the sixth, No Writ of protection can be allowed, unless it be under the great Seal, (*) and it is directed generally. (d) 35 H.6.2. artic. super Cart.6.46 E.3. petition 19. (*) Lib.2.fo. 7. Lanes Case. Lib.8. fo.68. Trollops Case.

(e) To the seventh, The Courts of Justice where the protection is cast are to allow or disallow of the same, be they Courts of Record, or not of Record, and not the Sherif, or any other Officer or Minister. 20 H.6. 25. 2 E. 4.4. 38 H. 6. 23.

(f) To the eighth, The protection may be cast either by any stranger, or by the party himself: an Infant, Feme covert, a Monk, or any other, may cast a protection for the Tenant or Defendant. And this difference there is when a stranger casteth it, and when the Tenant or Defendant casteth it himself. (g) For the Defendant or Tenant casting it, he must shew withall wherefore he ought to take advantage of the Protection; but an estranger need not shew any cause, but that the Tenant or Defendant is here by Protection. (e) 43 E.3. protect.96. (f) 21 E.4.18. (g) 38 H. 6. 23.

(h) As to the ninth, A protection may be avoided three manner of ways: First, upon the casting of it before it be allowed. Secondly, by repeal thereof after it is allowed: by disallowing of it many ways; as for that it lieth not in that Action, or that he hath no day to cast it, or for material variance between the Protection and the Record, or that it is not under the great Seal, or the like. (i) Thirdly, after it is allowed by Innotescimus: as if any tarry in the Country without going to the service for which he was retained, over a convenient time after that he had any Protection, or repair from the same service, upon information thereof to the Lord Chancellor, he shall repeal the Protection in that case by an Innotescimus. But a Protection shall not be avoided by an Averment of the party in that case, because the Record of the Protection must be avoided by matter of as high nature. (h) 44 E.3.12. 47 E.3.6. (i) 13 R.2. c.16. 11 H.4. 70. 7 H.6.22. 22 H.6.50. 30 H.6.3. 19 H.6.35. 21 E. 4.20. 1 H.6.6. 42 E.3.9. 44 E.3 2.39 E.3.435. 20 E.3. protect.86. 34 E.3. ibid. 119.

(k) There

(k) 44 E. 3. 4. 12. 47 E. 3. 6. 34 E. 3. protect. 119. 28 H. 6. 3. 34 H. 6. 22. 30 H. 6. 3. 32 H. 6. 4.

(k) There is a clause in the Protection to this effect, Præsentibus minime valituris, si contingat ipsum, &c. à custodia castri prædicti recedere. Or, si contingat iter illud non accipere, vel infra illum terminum à partibus transmarinis redire. Whereupon there be two conclusions to be observed.

First, That though the Protection be allowed by the Court for a year, yet if it be repealed by an Innotescimus, that the Resummons or Re-attachment shall be granted upon the Repeal within the year, for the Protection that was allowed had the said clause in it. And of that opinion be our later Books, and the Repeal by Innotescimus should serve for little purpose, if the Law should not be taken so.

Secondly, That albeit he that had the Protection either Moraturæ or Profecturæ return into England, and haply be arrested and in prison, yet if he came over to provide Munition, Habiliments of War, Victuals, or other necessaries, it is no breach of the said conditionall clause, nor against the Act of 13 R. 2. cap. 16. for that in judgment of Law, coming for such things as are of necessity for the maintenance of the War, moratur according to the intention of the Protection and Statute aforesaid. And thus much of the two first Protections Cum clausula Volumus, Profecturæ and Moraturæ.

(l) Registrum 281. b. F.N.B. 28. b. 33 H. 8. c. 29. in the preamble. 41 E. 3. tit. Execution 38. 18 E. 3. ibid. 56. 27 E. 3. 88. b. 4 E. 4. 16. 3 Eliz. Dier 197. Rot. par. 27 E. 3. part. 1. m. 2.
(m) 25 E. 3. cap. 19.

(l) As to the third Protection Cum clausula Volumus, The King by his Prerogative regularly is to be preferred in payment of his duty or debt by his Debtor before any Subject, although the Kings debt or duty be the latter: and the reason hereof is, for that Thesaurus Regis est fundamentum Belli, & firmamentum pacis. And thereupon the Law gave the King remedy by Writ of Protection to protect his Debtor, that he should not be sued or attached until he paid the Kings debt: but hereof grew some inconvenience, for to delay other men of their suits, the Kings debts were the more slowly paid. And for remedy thereof (m) it is enacted by the Statute of 25 E. 3. that the other Creditors may have their actions against the Kings Debtor, and proceed to Judgment, but not to Execution, unless he will take upon him to pay the Kings debt, and then he shall have Execution against the Kings Debtor for both the two debts.

(n) 41 E. 3. 15. 17 E. 3. 73. 29 E. 3. 13. 4 E. 4. 16.

This kind of Protection hath (as it appeareth) no certain time limited in it. But in some cases the subject shall be satisfied before the King: (n) for regularly whensoever the King is intitled to any fine or duty by the suit of the party, the party shall be first satisfied, as in a Decies tantum. And so if in an action of Debt the Defendant deny his Deed, and it is found against him, he shall pay a fine to the King, but the Plaintiff shall be first satisfied: and so in all other like cases. And so it is in Wils preferred by subjects in the Starchamber, their costs and damages (if any be) shall be answered before the Kings fine, as it is daily in experience.

(o) Regist. sæpe. F.N.B. 28. C.

The fourth Protection Cum clausula Volumus is, when a man sent into the Kings Service beyond Sea is imprisoned there, so as neither Protection Profecturæ or Moraturæ will serve him, and this hath no certain time limited in it; (o) whereof you shall read at large in the Register, and F.N.B.

(p) Vide lib. 7. fol. 8, 9. Calvins case.

(p) Now are we at length come to Protections Cum clausula Nolumus; all which, saving one, are of grace, and, as hath been said, are implied under the general protection: for, as Fitzherbert saith, every loyal subject is in the Kings Protection. Of these Protections of grace you shall not read much in our Year-Books, because they stayed no Actions or Suits. (q) Of the divers forms of these you shall read at large in the Register, and F.N.B. which were too long and needless to be here recited.

(q) Register 280, &c. F.N.B. 29. A.B.C.D.E.F.G.H. Register 280. Statut. de 14 E. 3. F.N.B. 30 A.

The Protection Cum clausula Nolumus, that is of right, is, that every spiritual person may sue a Protection for him and his goods, and for the fermors of their lands and their goods, that they shall not be taken by the Kings Purveyor, nor their carriages or chattels taken by other Ministers of the King: which Writ doth recite the Statute of 14 E. 3.

Of these Protections I cannot say any thing of mine own experience; for albeit Queen Elizabeth maintained many Wars, yet she granted few or no Protections: and her reason was, that he was no fit subject to be imployed in her service that was subject to other mens actions, lest she might be thought to delay Justice.

Sect. 200.

¶ *Entre & profesſe en Religion.*

¶ Et v. eſt, un home que eſt enter & profeſſe en Religion: ſi tiel

THE fifth is, where a man is entred and profeſſed in Religion: if ſuiſt

ſuiſt un action, le tenant ou defendant poit monſtrer que tiel eſt enter en religion en tiel lieu, e lorder de Saint Benet, e la eſt Moigne profeſſe, ou en lorder des Friers Preachers, ou Minors, e la eſt Frere profeſſe, e iſſint des auters orders de Religion, &c. e demaundera judgment ſil ſerra reſpondue. Et la cauſe eſt, pur ceo que quant un home entre en religion, e eſt profeſſe, il eſt mort en ley, e ſon fits ou auter couſin maintenant luy inheritera, auſſibien ſicome il fuit mort en fait. Et quant il entra en Religion il poit fair ſon teſtament e ſes executors, les queux executors averont un action de det due a luy devãt lentre en Religion, ou auter action que executors poient aver, ſicome il fuit mort en fait. Et ſil ne fait ſes executors quant il entra en Religion, dõques Lordinary poit committer ladminiſtration de ſes biens a auters homes, ſicome il fuit mort en fait.

ſuch a one ſue an action, the Tenant or Defendant may ſhew that ſuch an one is entred into Religion in ſuch a place, into the Order of S. *Benet*, and is there a Monk profeſſed, or into the order of Friers Minors, or Preachers, and is there a brother profeſſed, and ſo of other Orders of Religion, &c. and ask judgment if he ſhall be anſwered. And the cauſe is this, That when a man entreth into Religion, and is profeſſed, he is dead in the Law, and his Son or next Couſin incontinent ſhall inherit him, as well as though he were dead indeed. And when he entreth into Religion he may make his Teſtament and his Executors, and they may have an action of debt due to him before his entry into Religion, or any other action that Executors may have, as if he were dead indeed. And if that he make no Executors when he entreth into Religion, then the Ordinary may commit the Adminiſtration of his goods to others, as if he were dead indeed.

(a) It is to be obſerved, that a man doth enter into Religion at his firſt coming, and lyeth under obedience, but he is not profeſſed till a year be paſt, or ſome time of probation. And he is ſaid to be profeſſed when he hath taken the habit of Religion, and vowed three things, Obedience, wilfull Poverty, and perpetual Chaſtity. And therefore our Author ſaith here, enter & profeſſe. (a) Bract. lib. 5. fol. 415. 421. Britt. cap. 22. fol. 39. Fleta lib. 6. cap. 41. 5 E. 2. tit. nonabil. 26. 3 H. 6. 24. 1 E. 3. 9. 7 H. 4. 2. Doct. & Stud. 141. 21 R. 2. judgment 263. 11 R. 2. ibid. 107.

¶ *En Lorders des Freres Preachers, ou* (b) *Minors.* It appeareth in our Books, that of Friers there were four Orders, viz. Minors, Auguſtines, Preachers, and Carmelites; and the Franciſcani, Capuchini, and Obſervantes, are included under the Title of Minors: and they were called Obſervants, becauſe they be not Conventual, or joyned together in a Brotherhood, but live ſeparately, and bound themſelves to obſerve more ſtrictly the rites of their Order. (c) Cum quis ſemel ſe Religioni contulerit, renunciat omnibus quæ ſeculi ſunt, habita diſtinctione, utrum habitum probationis ſuſceperit, vel habitum profeſſionis. (b) 4 H. 4. cap. 17. 25 H. 8. cap. 12. (c) Bracton fol. 421. b.

¶ *Il eſt mort en Ley.* Civiliter mortuus, or mortuus ſeculo. (d) There is a death in deed, and there is a civil death or a death in Law, Mors civilis and mors naturalis, as here it appeareth; and therefore to ouſt all ſcruples, Leaſes for life are ever made during the natural life, &c. If the father enter into Religion, then ſhall his ſon and heir have an iſſue of Mordanceſtor, and the Writ ſhall ſay, (e) Si pater, &c. die quo obiit habitum religionis aſſumpſit, in quo habitu profeſſus fuit ut dicitur. (d) Bract. fol. 301. 426. Britt. fol. 226. 250, 251. Fleta lib. 6. cap. 41. (e) Fol. B. 196. 5 E. 4. 5.

¶ *Auxibien*

¶ *Auxibien come il fuit mort en fait.* But yet to theſe purpoſes Profeſſion, that is, the civil death, hath not the effect of a natural death.

First, This civil death ſhall never derogate from his own grant, nor be any mean to avoid it. And therefore if Tenant in Tail maketh a feoffment in Fee, and entreth into Religion, his iſſue ſhall have no Formedon during his life, becauſe that ſhould be in derogation of his own Grant, and be a mean to avoid the ſame.

(f) 32 E.1. Dower 176. 31 E.3. Colluſion 29. 33 E.3. Entre conge 52. 21 E.4. 14.

(f) Secondly, It ſhall never give her abail, without whoſe conſent he could not have entred into Religion; and therefore his wife after his civil death ſhall not be endowed until his natural death. But if the wife, after her husband hath entred into Religion, alien the land, which is her own right, and after her husband is deraigned, the husband may enter and avoid the alienation.

Thirdly, It ſhall not work any wrong or prejudice to a ſtranger that hath a former right; and therefore if the Diſſeiſor entreth into Religion, and is profeſſed, ſo as the land deſcends to his heir, yet this deſcent ſhall not toll the entry of the Diſſeiſee.

(g) 5 E. 4. 3. 2. (h) 18 H.6.33. per Forteſc.

(g) A woman cannot be profeſſed a Nun during the life of her husband: but ſome do hold a diverſity, (h) that ante carnalem copulam the husband or wife may enter into Religion without any conſent, but poſt carnalem copulam neither of them can without conſent of the other.

(i) 31 E.3. Colluſion 29. (k) 34 E.3. Garranty 71. Vid. the Chapter of Warranty, Sect.

(i) But if a man holdeth lands by Knights Service, and is profeſſed in Religion, his heir within age, he ſhall be in ward. (k) If I be diſſeiſed, and my brother releaſeth with warranty, and is profeſſed in Religion, and the warranty deſcendeth upon me; this warranty ſhall bind me, becauſe I am his heir, and ſuch inheritance as my brother had ſhall deſcend upon me.

(l) 21 R.2. judgm. 263.

(l) And if one Joyntenant be profeſſed in Religion, the land ſhall ſurvive to the other. If a man or a woman be profeſſed in Religion in Normandy, or in any other forreign part, ſuch a profeſſion ſhall not diſable them to bring any Action in England, becauſe it wanteth trial, but they muſt be profeſſed in ſome houſe of Religion within this Realm, for that may be tried by the Certificate of the Ordinary: ſo as of forreign profeſſions the Common Law taketh no knowledge.

(m) 10 E. 3. 511. 14 E. 3. Executors 87. 5 H.7.25. 21 H.6.30. 3 H.6.24.

(m) And yet in ſome caſe one that is profeſſed in Religion within the Realm ſhall have an Action, as if he be made an Executor, or if he be an Adminiſtrator, he ſhall maintain an Action, not in his own right, but in the right of the Dead.

(n) 44 E.3.9. Nonability 3. 14 H.8.16.

(n) If a Monk be made a Biſhop, or a Parſon, or a Vicar, he ſhall have an Action concerning his Biſhoprick, Parſonage, or Vicarage; & ſic de ſimilibus.

(o) 2 H.4.7. 8 H.5.6. 7 E.4.30. 44 E.3.4. 20 E. 3. Vill.10. & Nonability 9. 49 E. 3. 4.

(*) Bract. fo.415,416.429. Mir. c.2. ſect.14. 14 H.4. 27.b. 5 H.7.26. Vid.ſect. 296. 14 E.4.36.

(o) And if a Monk be Farmer of the King, yielding a Rent, he ſhall have an Action concerning that Farm. And albeit Littleton ſpeaketh generally, of one that is profeſſed in Religion, yet muſt it not be underſtood of the Sovereign or Head of the religious Houſe, as of the Abbot, Prior, or the like; (*) for albeit they be profeſſed in Religion, yet by the policy of the Law they are perſons able to purchaſe, and to implead, and to be impleaded, to ſue, and to be ſued, for any thing that concerns the houſe of Religion; for otherwiſe the houſe might be prejudiced, and other men alſo, of their lawful Actions. And this is the ancient Law of England, as it appeareth in theſe words,

(p) Mir. ubi ſupra.

(p) Des biens des gents de Religion appent laction al Chiefe en ſon noſme pur luy & ſon Covent. But what if a Monk, &c. were beaten, wounded, or impriſoned, &c. doth the Law give no remedy therefore? Yes verily; (q) for in that caſe the Abbot and the Monk ſhall joyn in an Action againſt the wrong doer: and if the Writ be, Ad damnum ipſius Prioris, the Writ is good; and if it be, Ad damnum ipſorum, it is good alſo. Alſo if a Monk be by conſpiracy falſly and maliciouſly indicted of Felony and Robbery, and afterwards is lawfully acquited, his Sovereign and he ſhall joyn in a Writ of Conſpiracy, and the like. And where Littleton ſpeaketh of a man that is profeſſed in Religion, the ſame Law is of a Nun, ſanctimonialis, mutatis mutandis.

(q) 22 Aſſ. 87. 21 E.3.41, 42. 22 E.3.2. 37 H.6.8. 32 H.6.36. Bract. lib.3. f.416.429. 13 E.3 Br. 261. 22 E.3.2. 38 H.6. 7.b. 24 E.3.34.b.45. 7 R.2. Nonability 3. 9.

(r) 4 H.3. Br.766.

(r) A wife is diſabled to ſue without her husband, as much as a Monk is without his Sovereign; and yet we read in Books, that in ſome caſes a wife hath had ability to ſue and be ſued without her husband.

(ſ) 2 H.4. fol.7. 2.

(ſ) For the wife of Sir Robert Belknap, one of the Juſtices of the Court of Common Pleas, who was exiled or baniſhed beyond ſea, did ſue a Writ in her own name without her husband, he being alive; whereof one ſaid, Ecce modo mirum, Quod fœmina fert Breve Regis, Non nominando virum conjunctum robore Legis.

(t) 10 E.3.53.

(t) King Edward the third brought a Quare impedit againſt the Lady of Maltravers, and ſhe pleaded, that ſhe was Covert of Baron; whereunto it was replied for the King, that her husband, the Lord Maltravers, was put in exile for a certain cauſe: and ſhe was ruled to anſwer.

(u) 1 H.4.1. b.

(u) King H. 4. brought a Writ of Ward againſt Sibell B. who pleaded, that ſhe was Covert Baron, &c. whereunto it was replied for the King, that her husband, for a crime that he had committed againſt the King and the Peers, was relegate or exiled into Gaſcoign, there to remain until he obtained the Kings grace. And Gaſcoign Chief Juſtice, Ex aſſenſu ſociorum, awarded that ſhe ſhould anſwer.

Sir Tho. Egerton, Lord Chancellor, in his argument which he publiſhed apart by himſelf in Cal-

Calvins case de Post-natis, demanded what former Precedent there was for the warrant of the Lady Belknaps case in 2 H. 4. -. which occasioned me to search, and upon search I found that the like judgement had been given before at the Parliament holden in Craſt. Epiph. An. 19. Edw. 1. where the case was, that Thomas of Weyland being abjured the Realm for Felony in the year before, Margerie de Mose his wife, and Richard son of the said Thomas, exhibited their petition of Right into the Parliament for the Mannor of Sobbir, wherein her husband had but an estate for life joyntly with her, and the inheritance in Richard the son by Fine. The Earle of Glouceſter, Lord of the Fee, (who, claiming the land by Eſcheat, had taken the poſſeſſion thereof,) alledged, Quod non fuit juri conſonum quod aliqua fœmina intraret in aliquas terras vivente marito ſuo, eo quod præfatus Thomas abjuravit Regnum, & adhuc vivit: & aſſerit idem Comes nunquam hujuſmodi caſum accidiſſe; & inde petit poſt multas allegationes quod poſſit prædictum manerium tenere ut eſchaetam ſuam. Super quo per ipſum Dominum Regem præceptum fuit, quod tam Juſtic' ſui de utroque Banco, quam cæteri de Regno ſuo tam milites quam ſervientes in legibus & conſuetudinibus Angliæ experti, mandarentur, quod eſſent coram Rege & ejus Concilio, &c. ad certiorandum ipſum Regem qualiter & quomodo in caſu iſto fuerit procedendum, & qualiter temporibus præteritis & anteceſſorum ſuorum in caſibus conſimilibus fieri conſuevit; & interim ſcrutantur Recorda de conſimilibus, ubi recitantur duo vel tres conſimiles caſus. Et quia licet prius non videbatur aliquibus juri conſonum fuiſſe, quod uxor in vita viri, ſecundum ſanctam Eccleſiam, qualitercunque deliquiſſet quoad forum Regium, non poſſet nec deberet à viro ſuo ſeparari, & ſic quicquid foret in poſſeſſione uxoris converteretur in poteſtatem viri ſui; & hoc manifeſtè imminueret contra conſuetudinem Regni; & etiam quia quidam dubitabant quod de poſſeſſionibus & bonis uxoris vir poſſit aliqualiter ſuſtentari: Tamen coram Concilio Domini Regis, vocatis Theſaur' & Baronibus & Juſticiariis de utroque Banco, concordatum eſt, quod prædicta Margeria rehabeat talem ſeiſinam, &c. ſecundum purportum finis prædict. &c. Patet etiam conſimile exemplum tempore Henrici patris Regis. I have cited this ſolemn reſolution the more at large, becauſe there be many excellent things to be obſerved in it: ſo as by that which hath been ſaid it plainly appeareth, that this opinion concerning the hability of the wife of a man abjured or baniſhed was not firſt hatched by the Judges in Henry the fourths time. And here it is to be obſerved, that an abjuration, that is, a deportation for ever into a forrein Land, like to Profeſſion, (whereof our Author ſpeaketh here) is a civil Death; and that is the reaſon that the wife may bring an Action, or may be impleaded, during the natural life of her husband.

Pl. in Parliam. 19 E. 1.

Note the ancient trial of difficult matters in Law.

The great authority of Judicial Records and Precedents.

A ſolemn reſolution of the Law in this point.

And ſo it is, if by Act of Parliament the husband be attainted of Treaſon or Felony, and, ſaving his life, is baniſhed for ever, as Belknap, &c. was; this is a civil death, and the wife may ſue as a feme ſole. And hereby you may underſtand your Books which treat of this matter. But if the husband by Act of Parliament have judgment to be exiled but for a time, which ſome call a Relegation, that is no civil death. And in 8 E. 2. an Abjuration is called a divorce between the husband and wife. Sed opus eſt interprete; for by Law no ſubject can be exiled or baniſhed his Country, whereby he ſhall perdere patriam, but by authority of Parliament, or in caſe of Abjuration, and that muſt be upon an ordinary proceeding of Law, as it was in this caſe of Weyland.

8 E. 2. Coron. 425. So reſolved in Parliam. upon the making of the Statute of 35. El. c. 1. Exilium Hugonis de Spencet patris & filii tempore E. 2. 31 E. 1. Cui in vita 31.

Another example we have in our books to this effect: If the husband had aliened the land of his wife, and after had committed felony, and been abjured the Realm, the wife ſhall have a Cui in vita in his life-time, agreeable with the ſaid Reſolution in Parliament, for that the Abjuration was a civil death.

Dæ in the Regiſter, a woman was baniſhed out of the Town of Calice for adultery, by the law or cuſtome of that place, and there appeareth Carta pardonationis pro muliere bannita. Sed nos non habemus talem conſuetudinem.

Regiſt. fol. 312. b.

(a) But by the Common Law, the wife of the King of England is an exempt perſon from the King, and is capable of lands or tenements of the gift of the King, as no other Feme covert is, and may ſue and be ſued without the King: for the wiſdome of the Common Law would not have the King (whoſe continual care and ſtudy is for the publick, & circa ardua Regni) to be troubled and diſquieted for ſuch private and petty cauſes: ſo as the wife of the King of England is of ability and capacity to grant and to take, to ſue and be ſued, as a Feme ſole by the Common Law.

(a) Vid. in my Preface to the ſixth Book. This was Law before the conqueſt. 10 E. 3. 27. b. 508, 30 E. 3. 5. 18 E. 3. 1. 22 E. 3. 21, 49 E. 3. 4. 49 Aſſ. 8. 11 H. 4. 67. 14 E. 3. Vouch. 110. 20 E. 3. Non-abil. 9. 31 E. 3. Quare imp. 146, 3 H. 7. 14. 19 H. 6. 2. 28 H. 6. 13. 7 H. 7. 1. 26 H. 6. Aid le Roy 24. Fleta. li. 2. ca. 63. in fine, Pl. Com. 231. Staunf. Prer. 10. b.

(b) And ſuch a Queen hath many prerogatives. As, ſhe ſhall find no pledges; for ſuch is her dignity, as ſhe ſhall not be amerced.

The Queen nor the Kings ſon are reſtrained by the Statute of 1 H. 4. cap. 6. concerning grants by the King.

(b) 18 E. 3. 2. 33 E. 3. briefe 516 F. N. B. 101. 2.

(c) In a Quare impedit brought by her, ſome ſay that Plenarty is no plea, no more then in the caſe of the King.

(c) 18 E. 3. 32. 24 E. 3. 35. 75.

(d) If any Bailiff of the Queens bring an action concerning the Hundred, he ſhall ſay, In contemptum Domini Regis & Reginæ.

(d) 32 E. 3. Brev. 346. 9 E. 3. 33.

The Quæn ſhall pay no Toll.

(e) F.N.B. 235. A.

(e) If the Tenant of the Quæn alien a certain part of his Tenancy to one, and another part to another, the Quæn may diſtrain in any one part for the whole, as the King may do; but other Lords ſhall diſtrain but for the rate: and therefore where the Queen ſo diſtraineth, there lieth a writ De onerando pro rata portione.

(f) F.N.B. 1. F.

(f) The Writ of right ſhall not be directed to the Quæn no more then to the King, but to her Bailiff: otherwiſe it is when any other is Lord.

(g) 14 E. 3. Vouch. 110. 21 E. 3. 53. 22 E. 3. 3. b. 17 E. 3. 65. 10 E. 3. 17. 5 E. 3. 4. 15 E. 3. Aide del Roy 66. 10 E. 3. 18. 26 H. 6. Aide le Roy 24.

(g) In caſe of aid prier of the Quæn, it is, Domina regina inconſulta, and the cauſe of the aid prier ſhall not be counterpleaded no more then in the Kings caſe. And ſee where the aid ſhall be granted of the King and Quæn, and where of the Quæn only, and ſhe of the King.

(h) 21 E. 3. 13. 34 E. 3. Protect. 122. 11 H. 4. 67. b.

(h) But a Protection ſhall be allowed againſt the Quæn, but not againſt the King: neither ſhall the Quæn be ſued by petition, but by a Præcipe.

(i) 30 E. 3. 5.

(i) The Quæn is not bound by the ſtatute of Marlebridge for dviding a Diſtreſs into another County.

(k) Leſtat. de 25 E. 3. de Proditionibus.

(k) If any do compaſs the death of the Quæn, and declare it by any overt fact, the very intent is Treaſon, as in the caſe of the King.

(l) Rot. Parliam. 8 H. 6. nu. 7.

(l) No man may marry the Quæn Dowager without the Kings Licence. But let us now return to Littleton.

¶ *Il poet faire ſon teſtament & ſes executors, &c.*

(m) 4 E. 4. 25. 6 E. 4. 4. 45 E. 3. 10. a. 18 E. 4. 19. 22 H. 6. 5. 5 H. 7. 25. b.

(m) If A. be bound to the Abbot of D. A. is profeſſed a Monk in the ſame Abby, and after is made Abbot thereof; he ſhall have an action of Debt againſt his own Executors.

¶ *Donques lordinarie poet commit adminiſtration, &c. ſicome il fuit mort en fait.*

(n) Pl. Com. 280, 281. Greisbrooks caſe.

(n) Note, the ſtatute of 31 E. 3. cap. 11. that giveth actions to the Adminiſtrators, ſpeaketh of a man that dies inteſtate, which by the authority of Littleton extendeth as well to a civil death as to a natural.

Sect. 201.

¶ *Excommenge, excommunicatus, excommunicatio.*

(a) Bracton lib. 5. fol. 415. 426, 427. Fleta lib. 6. c. 44. Britton cap. 49. fol. 125.

(a) Sicut quis poterit habere lepram in corpore, ita & in anima. Excommunicato interdicitur omnis actus legitimus, ita quod agere non poteſt, nec aliquem convenire, licet ipſe ab aliis poſſit conveniri.

Excommunicatio eſt nihil aliud quam Cenſura à Canone vel Judice Eccleſiaſtico prolata & inflicta, privans legitima communione Sacramentorum, & quandoque hominum. * It is divided into the greater, and the leſſer. Minor eſt, per quam quis à Sacramentorum participatione conſcientia vel ſententia arceatur. Major eſt, quæ non ſolum à Sacramentorum, verum etiam fidelium, communione excludit, & ab omni actu legitimo ſeparat & dividit. But either of them both diſableth the party.

* F.N.B. 64. F.

(b) Bracton 426. b. acc.

(b) Cum excommunicato autem nec orare, nec loqui, nec palam, nec abſconditè, nec veſci licet, exceptis quibuſdam perſonis. But every Excom-

¶ *Lev i. eſt, lou un home eſt excommenge per la ley de ſaint Eſglíſe, & il ſuiſt un action real ou perſonal, le tenant ou defendó poit plede que celuy que ſuiſt eſt excommenge: & ó ceo covient mẽe lerr de Leveſqꝫ couth ſon ſeale, teſmoignant lexcommengement, & demaundera judgement ſil ſerra reſpondue, &c. Mes en ceſt cas, ſi le Demandant ou Plaintife ceo ne poit dedire, le bꝛe nabatera my; mes le judgement ſerra, que le Tenant ou Defendant aleꝫ quite ſans*

THE 6. is, where a man is excommunicated by the Law of holy Church, and he ſueth an action real or perſonal, the Tenant or Defendant may plead that he that ſueth is excommunicated: and of this it behoves him to ſhew the Biſhop's letters under his Seal, witneſſing the excommunication, and aske judgement if he ſhall be anſwered, &c. But in this caſe, if the Demandant or Plaintiffe cannot deny it, the Writ ſhall not abate; but the judgment ſhall be, that the tenant or defendant ſhall go quite without jour,

iour, pur ceo q̄ quant le Demandant ou plaintife ad purchase les letters de absolution, & ceux sont monstres a le Court, il poit aū un resommons ou reattachment sur son originall, solonque la nature de son bre. Mes en les auters b. cases le bre abatera, &c. si le matter mre ne poit estre dedit.

day, for this, that when the Demandant or Plaintife hath purchased his Letters of absolution, and shewed them to the Court, he may have a resummons or reattachment upon his originall, after the nature of his Writ, &c. But in the other cases the Writ shall abate, &c. if the matter shewed may not be gainsaid.

munication disableth not the party. (c) If Baliffs and Commons, or any other Corporation aggregate of many, bring an Action, Excommengement in the Baliffs shall not disable them, for that they sue and answer by Attorney: otherwise it is of a sole Corporation. But if Executors or Administrators be excommunicated, they may be disabled, because they which converse with a person excommunicate are excommunicate also. (d) If a Bishop be Defendant, an excommunication by the same Bishop against the Plaintiff shall not disable him, & it shall be intended for the same cause, if another be not shewed.

(c) 30 E.3.15. 42 E.3.13. 21 H.6.30. 21 E.4.49.

(d) See Artic. Cleri c.7. 5 E.3.8. 8 E.3.70. 9 H.7.21. 10 H.7.8,& 9. 18 E.3.58. 28 E.3.97. 16 E.3. Excom. 5. 20 E.3. ibid.9. 3 H.4.3.

¶ *Letter del Evesque desouth son seal.* (e) None can certifie excommengement but only the Bishop, unless the Bishop be beyond sea, or in remotis, or one that hath ordinary jurisdiction, and is immediate Officer to the Kings Courts; as the Archdeacon of Richm. or the Dean and Chapter in time of vacation. (f) But in ancient time every Officiall or Commissary might testifie excommengement in the Kings Court; and for the mischiefs that ensued thereupon, it was ordained by Parliament, that none should testifie excommengement but the Bishop only.

(e) Bract. lib.5.fo.426.b. 12 E.4.15.20 H.6.17. 20 E.3. Excommengement 20. 33 E.3.ib.29. 44 E.3.ib.23. 11 H.4.14. F.N.B.64,65.239. 7 E.4.14. 8 H.6.3. Regist.67.

(f) 11 H.4.62. in Debt.

(g) If a Bishop certify, that another Bishop hath certified him, that the party which is his Diocesan is excommunicated, this Certificate upon anothers report is not sufficient. (h) If the Bishop of Rome, or any other having forrein authority, doth excommunicate any subject of this Realm, and certifieth so much under his seal of lead, this shall not disable the party: For the Common Law disallows all Acts done in disability of any subject of this Realm by any forrein power out of the Realm, as things not authentick, wherof the Judges should give allowance. (i) If the Bishop certifieth the excommunication under seal, albeit he dieth, yet the Certificate shall serve. (k) Si quis innodatus fuerit per excommunicationes diversas pro diversis delictis, & profert literas absolutionis de una sententia, non erit absolutus quousque de omnibus aliis absolvatur.

(g) 33 E.3. Excom.29. F.N.B. 65.

(h) 16 E.3. Excom. 4. 31 E.3. ibid.4. & 6. 30 Ass.19. F.N.B.64. 4 H.7.15. 22 E.4.15. 14 H.4.14.

(i) 14 E.3. Excom.8. 8 E.2. ibid. 26.

(k) Hill. 14 E.3. Coram Rege, London in Thesaur.

¶ *Evesque.* Episcopus, a Bishop, is regularly the Kings immediate Officer to the Kings Court of Justice in causes Ecclesiastical. And all the Bishoprics in England are of the Kings foundation, and the King is Patron of them all. (l) And at the first they were donative, and so it appears by our Books, and by Acts of Parliament, and by History, and that was Per traditionem annuli & pastoralis baculi, i. the Crosier. And King Henry the first being perswaded by the Bishop of Rome to make them elective by their Chapter or Convent, refused it. (m) But King John by his Charter acknowledging the custome and right of the Crown in former times, yet granted, de communi consensu Baronum, that they should be eligible; which after was confirmed by divers Acts of Parliament. And afterward the manner and order, as well of election of Archbishops and Bishops, as of the Confirmation of the election and Consecration, is (n) enacted and expressed in the Statute of 25 H. 8. But by the Statutes of 31 H 8. and 1 E.6. they were made donative by the Kings Letters Patents. Both which Statutes are repealed, and the Statute of 25 H.8. doth yet remain in full force and effect.

(l) 17 E.3.fo.40. 25 E.3. cap. de provis. 25 H.8. cap.20. Lib.3. f.73. le case de Dean & Chapter de Norwich. Mat. Par. pag. 62. Vide Sect.133,134.

(m) Rot. pat.15. Januar. 17 Regis Johannis. Mat. Par. pag. 252. 35 E.1. Lestat. de Carlisle. 25 E.3. Lestatute de provis. 13 R.2. cap.2.

(n) 25 H.8. cap.20.

And where Littleton saith, that the Bishop under his seal must testifie, &c. it is to be known (o) that none but the Kings Courts of Record, as the Court of Common Pleas, the Kings Bench, Justices of Gaol delivery, and the like, can write to the Bishop to certify bastardy, mulierty, loyalty of matrimony, and the like Ecclesiastical matters: for it is a rule in Law, that none but the King can write to the Bishop to certify, and therefore no inferiour Court, as London, Norwich, York, or any other Corporation, can write to the Bishop; but (p) in those cases the plea must be removed into the Court of Common Pleas, and that Court must write to the Bishop, and then remand the Record again. And this was done in respect of the honour and reverence which the Law gave to the Bishop being an Ecclesiastical Judge.

(o) 2 E.3. Coron. 160. 8 E.3.59. 24 E.3.33. 44 E.3.28. 8 R.2. Consulans 88.

(p) 41 E.3. 42 E.3.fol.2. 18 E.3.61. 14 H.4.25. 3 H.4.12. Regist.7. a. F.N.B. 6.E.

and a Lord of Parliament, by reaſon of the Barony which every Biſhop hath. And this was the reaſon (a) a Quare impedit did lie of a Church in Wales, in the County next adjoyning, for that the Lordſhips Marchers could not write to the Biſhop: (b) neither ſhall conuſans be granted in a Quare impedit, becauſe the inferiour Court cannot write to the Biſhop. And herewith agreeth Antiquity; (c) Nullus alius præter regem poteſt epiſcopo demandare inquiſitionem faciendam. (d) And another ſpeaking of loyalty of marriage; Nec alius quàm rex ſuper hoc demandaret epiſcopo quod inde inquireret: epiſcopus alterius mandato quam regis non tenetur obtemperare. And herewith agreeth Britton alſo.

(a) 8 E.3.59. 36 H.6.33. tit. Quar. imp. Brooke 109. 35 H.6.30. 11 H.6. 3. 24 E. 3. 33.
(b) 15 E.3. Conuſans 41. juriſdict. 24. 40 E.3.2. Vide Sect. 134.
(c) Bract. lib.3.106.
(d) Fleta lib.5. cap.24. Britton fol. 248. b.

¶ *Le briefe nabatera, &c.* Abater is a French word, and ſignifieth Deſtruere, or Proſternere, to deſtroy, or proſtrate. And Abatement de briefe is a proſtration or overthrowing of the Writ.

(*) Bract.lib.5. fol.425. 11 R.2. Excom.25. 13 E 4.8. 3 Aſſ.p.12. Vide Sect. 691.

¶ * *Alera quite ſauns jour, &c.* That is, to go quiet without any continuance to any certain day; and therefore the Defendant is not bound to any certain attendance until the party purchaſeth his Letters of abſolution, and the re-attachment or re-ſummons be ſued; the entry of which award is, Ideo loquela prædicta remaneat ſine die quouſque, &c.

(e) 51 H.3. cap.1, & 2. Marlebr. cap.18. 32 H.8. cap.21.

¶ *Jour.* Dies (e) in legal underſtanding is the day of appearance of the parties, or continuance of the plea. And you ſhall underſtand, that firſt in real actions there are Dies communes, common days, whereof you ſhall read in divers ancient Statutes.

(f) Articul. ſuper Cart. cap.15. 28 E.1.
(g) 8 H.6.20. 30 H.6.35. 8 Eliz. Dier 252.

(f) Alſo in all Summons upon the original there muſt be fifteen days after the Summons before the appearance. (g) But if the original be returned tarde, and Summons alias goeth forth, there muſt be nine Returns between the Teſte and the Return. And ſo in other judicial proceſſe in real actions; ſaving if Conuſans be demanded to be holden within his Manor, there proceſſe ſhall be awarded from three weeks to three weeks.

(q) Mirr. cap.2. ſect. 19. Bract. lib.5. fo. 334. & lib.4. fol.255. Brit. fol. 279. b. Flet. lib.6. cap.6. 12 E. 4. 15.

And before the Statute of Articuli ſuper cartas, in all Summons and Attachments in plea of Land there ſhall be contained the term of fifteen days. (q) And it appeareth as well by the Statute, as by the ancient Authors of the Law, who wrote before the Statute, that this was the ancient Common Law. And the reaſon of theſe long days given in real actions was, (the recovery being ſo dangerous,) that the Tenant might the better provide him both of anſwer and of proofs: (*) but by conſent they may take other then common days.

(*) 11 H.6. 23. 15 E.3. jour.22. 21 E.3.29. 15 Aſſ. Britton fol.10.b.

And it is not amiſſe to note what the ancient Law was in proceeding againſt a man for his life. And therefore hear what Britton ſaith; Sur le preſentment de ceſt felony (under which he includeth alſo Treaſon) voilons nous (for he wrote in the Kings name) que treſtous ceux que ent ſerr' endites face le Viſcont haſtiment prender, & ſafement lour corps en priſon garder, & que ilz ſont menes devant nous, ou devant nous Juſtices: & pur ceo que nulluy ne ſoit diſgarnis de lour reſpons, voilons que ceux que iſſint ſoient priſe, que ilz eynt temps de purveyer lour reſpons 15 jours au meyns ſils le prient, & en dementiers ſoient ſafement gardes. (r) Vide Forteſcue of this matter. And ſee the Mirror, that in ſome caſes the party condicted had forty days, or at leaſt thirty days, to ſhew ſome matter to diſturb (that is, to arreſt) Judgment; which now I know is gone in deſuetudinem, and great expedition is now made in pleas of the Crown concerning the life of man. Sed de morte hominis nulla eſt cunctatio longa.

(r) Forteſcue in libro de laudibus legum Angliæ. Mirror cap.4. ſect. Sept choſes diſturbent judgements mortels.
(ſ) Lib.9.118.b. Zanchers Caſe.

(ſ) And the uſe of the Kings Bench at this day is, that if the offence be committed in another County then where the Bench ſits, and the Inditement be removed by Certiorari, there muſt be fifteen days between every proceſs and the return thereof; but if it be committed in the ſame County where the Bench ſit, they may proceed de die in diem; but ſo they will do rarely. But let us return again to the Common Pleas.

(a) Artic. ſuper cart. ubi ſupra. F.N.B. 177. c. 11 Aſſ.30. 12 Aſſ.4. 22 Aſſ. 79. 3 H.6. Aſſ.2. 9 E.4.5.2. 27 E.3.1. 2 W.1. ca. ult.
(*) F.N.B.177.D. 7 Aſſ. 7. 14 Aſſ. 4. 24 E.3.31. 39 E.3.20. 9 E.4.18. 12 E.4.15. 8 H.5. Err.87.

Secondly, There is a day called Dies ſpecialis; (a) as in an Aſſiſe in the Kings Bench or Common Pleas, the attachment need not be fifteen days before the appearance. Otherwiſe it is before Juſtices aſſigned, but generally in Aſſiſes the Judges may give a ſpecial day at their pleaſure, and are not bound to the common days; (*) and theſe days they may give as well out of term as within. So upon an imparlance the Court may give any ſpecial or particular day, but that muſt be in the term-time; and likewiſe in a Scire facias, upon a fine or a recovery in a real action, becauſe it is a Writ of Execution; and ſo it is in a Per quæ ſervitia, and the like, and in all judicial Writs: in proceſs againſt an Infant to judge of his age, or where the husband prayeth in aide of his wife, or in a Pone at the ſuit of the Defendant, there need not be fifteen days. Alſo after a Demurrer in Law, the Court may give what day they will.

12 E. 4. 15.
(b) 41 E.3. jour.16. 8 E.4. 4. 1 H.6.4. 27 Aſſ. 33.
(c) 3 E.2. avowry 188. 15 E.3. jour.26. 22 E.3. 20. 1 E.3.4. Lib.9. fol.49. Countee de Salops Caſe. 33 H. 6. 42.

(b) And it is worthy the noting, that if in an Aſſiſe the parties be adjourned to Weſtm. uſque 15. Paſch. there they be not demandable till the fourth day; but if it be adjourned uſque diem Lunæ or diem Martis, there the parties are demandable on that day.

Thirdly, (c) There is a day of grace, dies gratiæ, or a day of courteſie; the name both ſhew of what kind it is. And regularly this day is granted by the Court at the prayer of the Demandant

mandant or Plaintiff in whose delay it is, and never at the prayer of Tenant or Defendant. But it is worthy of observation, (d) that a day of grace is never granted where the King is party by Aide prier of the Tenant or Defendant; nor where any Lord of Parliament or Peer of the Realm is Tenant or Defendant. (e) And sometime the day that is 4. die post is called dies gratiæ: for the very day of return is the day in Law, and to that day the Judgment hath relation; but no default shall be recorded till the fourth day be past, unlesse it be in a Writ of right, where the Law alloweth no day, but onely the day of return. This day is sometime called dies amoris, and sometime a dies datus. But it were too long to enumerate all. This shall be sufficient to give the Reader a taste to understand the residue concerning this matter.

(d) 14 E.3. jour. 24. 15 E. 3. ibid. 21. 22 E.3.9. 27 E.3.88.
(e) 22 E.4. jour.39. 18 E.3. ibid.20. 38 E.3. 20. 9 Ass.21. 21 E.3.13. 41 E.3. ibid. 16. 33 H.6. 42. 34 H.6. 27. 10 Eliz. Dier 269. 39 H.6.29. 24 E.3.28.24 E.3. breve 556. Bract. l.5. fol.367.

(f) There is also a day of appearance in Court by the Writ, and by the Roll: by Writ, when the Sheriff returns the Writ; by the Roll, when he hath a day by the Roll, and the Sheriff returns not the Writ, there the Defendant, to save himself from corporal pain, as by imprisonment, or to prevent the losse of issues, or to save his freehold or inheritance, may appear by the day he hath by the Roll.

(f) 21 E.3. 43. 3 H.6.2. 2. 22 H.6. 20. 3 E.4.15. 6 E.4. 7 E.4.15. 8 E.4.18. 3 H.7.8. 10 H.7. 11. b. 27 H.8.14. Lib.11.40. 17 E.3.2. 11 Eliz. Dier 286.

(g) Note, it is said commonly, that the day of Nisi prius and the day in bank is all one day; that is to be understood as to pleading, but not to other purposes.

(g) 21 H.6.10.20. 4 H.6.9 40 E.3.31.

There are dies juridici, (which (h) Britton calleth temps covenables,) and dies non juridici: dies juridici (except it be in Assises) are onely in the Tearm. (i) And there be also in the Tearm dies non juridici. As in all the four Tearms, the Sabbath-day is not dies juridicus, for that ought to be consecrated to Divine Service. Also in Michaelmasse Tearm, the Feasts of All Saints and of All Souls, in Hillary Tearm, the Purification of the blessed Virgin Mary, and in Easter Term, the feast of the Ascension, are not dies juridici, but set apart by the ancient Judges and Sages of the Law for Divine Service. As for Trinity Tearm, it sometime had seven days of return, and was as long as Michaelmasse Tearm is now: but for avoiding of infection in that hot time of the year, and that men might not be letted to gather in Harvest, three returns (since Littleton wrote) viz. Crastino Sancti Johannis Baptistæ, Octabis Sancti Johannis Baptistæ, and 15 Sancti Johannis Baptistæ, are by the Statute of 32 H.8. cut off, and become dies non juridici. And in those days the Feast of S. John the Baptist was not dies juridicus. And the said Statute, called Dies Communis in Banco, is in divers points since Littleton wrote altered, as by the said Statute appeareth. And in ancient time respect and reverence was had by Law to certain times, as it appeareth (k) by the Statute of W. 1. c. 5. which hath a short, but an excellent preamble: viz. Et pur ceo que grand charitie serra de faire droit a touts in tout temps, ou mestier serroit; purvieu est per assentment des Prelates, que Assises de novel disseisin, mortdancestor, & darreine presentment, fuissent prises en le Advent, en Septuagesime, & en Quaresme, auxibien come (le home) prent lenquestes: & ceo pria le Roy as Evesques.

(h) Britton fol.134. a.
(i) Mirror cap.3. Sect. exception de temps, & cap.5. Sect.1.
32 H.8. cap.21.
(k) W.1. cap. ultimo.

(l) This Statute is expounded in Books: which I have onely added, to the end the studious Reader might understand the Books that darkly speak of this matter, and be ignorant of nothing that belongs to the understanding of any part of the Law. Now Advent is a moneth before the Feast of the Nativity of our Saviour Christ, so called De adventu Domini in came. Septuagesima beginneth ever on the Sabbath day, and is the third Sabbath before Shrovesunday, so named, because it is the 70. day before the Feast of Easter. Sexagesima is the second Sabbath before Shrovesunday, so named, because it is the 60. day before Easter. And so of Quinquagesima and Quadragesima: (m) whereof you shall read in Acts of Parliament, and ancient Authors. Now as there be dies juridici, so there be horæ convenientes, whereof the Mirror saith, (n) Abusion que len tient pleas per dimenches, (id est, Sabbaths) ou per auters jours defeudus, ou devant le soleil levy, ou nocturne, ou en dishonest lieu.

(l) 7 Ass.p.7. 14 Ass.5. F.N.B. 177. &c. Britton fol.134. b.
(m) W.1. c. 51. fait ana. 3 E.1. Britton fol.134.cap.33.
(n) Mirror lib.5. Sect.1.

(o) Furthermore there are (as ancient Authors term them) Dies solaris & dies lunaris, secundum quod Deus divisit lumen à tenebris; ex quibus duobus diebus efficitur unus dies, qui dicitur artificialis, ex die præcedente & nocte subsequente, qui constat ex 24 horis.

(o) Bract. lib.4. fol.264. Britton fol.209.

But we at this day retaining the same method do differ in words. For we say, Dierum alii sunt naturales, alii artificiales; dies naturalis constat ex 24. horis, & continet diem Solarem & noctem: and therefore in Inditements of Burglary, and the like, we say, in nocte ejusdem diei. Iste dies naturalis est spatium in quo Sol progreditur ab Oriente in Occidentem, & ab Occidente iterum in Orientem. Dies artificialis sive Solaris incipit in ortu Solis, & definit in occasu: And of this day the Law of England takes hold in many cases. Now divers Nations begin the day at divers times: the Jews, the Chaldæans and Babylonians begin the day at the rising of the Sun; the Athenians at the Fall; the Umbri in Italy began at mid-day; the Ægyptians and Romans from mid-night, and so doth the Law of England in many cases. Of all which you shall read plentifull matter in our Books, and in my Reports, which by this short instruction you shall the better understand.

Gen. cap.1. ver.4,5.

(p) There is also Annus minor, and major. The lesser year consisteth of 365. days and six hours, whereby in every fourth year there is dies excrescens, which makes that year to

(p) Bract. lib.5. fol.359. Britton fol. 209. a.

have in rei veritate 366 days, and that is called annus major. (q) A quarter of a year containeth by legal computation 91 days, and half a year containeth 182 days; for the odde hours in legal computation are rejected: and by (r) the Statute de anno bissextili it is provided, Quod computentur dies ille excrescens & dies proxime præcedens pro unico die, so as in computation that day excrescent is not accounted. A moneth, mensis, is regularly accounted in Law 28 days, and not according to the Solar moneth, nor according to the Kalendar, (s) unlesse it be for the account of the laps in a Quare impedit. There is mensis Solaris, and mensis Lunaris. Solaris est 12. pars anni, viz. spatium 30. dierum, horarum 10. & minutorum 30; & Lunaris est spatium 28. dierum.

(q) 17 Eliz. Dier 345.

(r) 21 H. 3. stat. de anno bissextili.

(s) Lib. 6. fol 62. Catesbyes case.

¶ *Resommons ou reattachment.* These are Writs that the Demandant or Plaintiff, after he hath obtained his Letters of absolution, may sue out to bring the Tenant or Defendant again into Court to have day, to make answer unto him. (t) And these Writs do lye in all cases when the plea is discontinued, or put without day, either in this case, or in case when the Demandant or Tenant hath his age, or for the non venue of the Justices, or in case of a Protection, or Essoine de service le Roy, &c. Of these Writs there be two sorts, viz. general and special, whereof you may see precedents, and read more at large, in the case of discontinuance of Processe in my Reports, and need not here to be inserted.

(t) Bract. lib. 5. fol. 425. Brit. c. 74. lib. 7. fol. 29, 30.

¶ *Sur son originall.* This is intended of his original Writs, or of that which is in stead of an originall Writ. But note, that in the other five cases the Writ shall abate, and in the case of Excommengement the Writ shall not abate, but the plea be put without day, untill the Plaintiff purchase his letters of Absolution, and sue out his resummons or reattachment.

But in the case of outlawry the writ shall abate, if he obtain not his pardon. 44 E. 3. 27.

In ancient times more persons seemed to be disabled then these six recited by Littleton. As first, he that was a Leper, and by the Writ De leproso amovendo was propter contagionem morbi præd', (as the Writ saith) & propter corporis deformitatem, (as others say) to be removed from the society of men to some solitary place; and thereupon (u) it is said, Datur etiam exceptio tenenti ex persona petentis peremptoria, propter morbum petentis incurabilem, & corporis deformitatem: ut si petens leprosus fuerit, & tam deformis quod aspectus ejus sustineri non possit, & ita quod à communione gentium sit separatus, talis quidem placitare non potest, nec hæreditatem petere. (x) And herewith Britton agreeth, treating of disabled men, as men outlawed, abjured the Realm, attainted of felony, &c. he addeth, ne mesel, ouste de common gents.

(u) Bract. lib. 5. fol. 421.

(x) Brit. fol. 39. & 88.

(y) And Fleta saith, Competit etiam ei exceptio propter lepram manifestam, ut si petens leprosus fuerit, & tam deformis quod à communione gentium merito debet separari; talis enim morbus petentem repellit ab agendo.

(y) Fleta lib. 6 cap. 39. 22 E. 3. in dors. clauf 20. part. nu. 14. F.N.B. 234. Register.

And if these ancient writers be understood of an appearance in person, I think their opinions are good Law, for they ought not to sue nor defend in proper person, but by Attorny, for they are separated à communione gentium propter contagionem morbi, & deformitatem corporis.

Before the Conquest this disease was not known in England: For Master Cambden writing of Burton-Lazers in Leicestershire, saith, (a) Primis Normannorum temporibus collecta per Angliam stipe nosocomium hoc constructum ferunt, quo tempore lepra (quæ à nonnullis Elephantiasis) gravissime vi contagionis per Angliam serpsit. And it is called Morbus Elephantiasis, because the skins of Lepers are like to Elephants. (b) And the Law of England, for the removing of the Lepers from the society of men to some solitary place, is grounded upon Gods Law.

(a) Camden in Leicestershire, verbo Burton.

(b) Levit. c. 13. ver. 44, 45, 46. Num. cap. 5. ver. 1, 2. 4 Regum cap. 15.

(c) Also there was a time when Ideots, Madmen, and such as were deaf and dumb naturally, were disabled to sue, because they wanted reason and understanding, (tales enim non multum distant à brutis:) but at this day they all may sue, for the suit must be in their name, but it shall be followed by others. (d) And note, that when an Ideot doth sue or defend, he shall not appear by Gardian, or Prochein Amy, or Attorney, but he must be ever in person; (e) but an Infant or a Minor shall sue by Prochein Amy, and defend by Gardian. But now let us hear what Littleton will say unto us.

(c) Bract. lib. 5. 420, 421. Britton fol. 39. Fleta lib. 6. cap. 37.

(d) 33 H. 6. 18. F.N.B. 27 G.

(e) 27 H. 8. 11. 40 E. 3. 16. 20 E. 4. 2. F.N.B. 27. H.

Sect. 202.

¶ *Chaplein* (a) *seculer* is he that is infra sacros ordines, but he is not regular, (that is) liveth not under certain Rules,

(a) Mirr. cap. 2. Sect. 18. Doct. & Stud. fol. 141. 4 E. 4. 25. per Danby. 27 Ass. Pl. 49.

¶ Item si un villein est fait un chapleine seculer, uncore son Seignior poit luy

Also if a Villein be made a secular Chaplain, yet his Lord may seise him as seiser

ſeiſer come ſon villein, & ſeiſer les biens, &c. Mes il ſemble que ſi le villeine enter en Religion, & eſt profeſſe, que le Sñr ne poit luy prender ne ſeiſer, pur ceo que il eſt mort en Ley; nient pluis q̃ ſi un frank home prent un nieſe a ſa feme, le Seignior ne poit prender ne ſeiſer la feme de le baron, mes ſon remedy eſt daver un action envers le baron, pur ceo que il priſt ſa nieſe a feme ſans ſon licence & volunt, &c. Et iſſint poit le Seignior aver action envers le Soveraign del meaſon que priſt & admittaſt ſon villein deſtre profeſſe en meſme le meaſon ſans licence & la volunt le Seignior, & recovera ſes damages a la value de le villein. Car celuy que eſt profeſſe Moigne ſerra un Moigne, & come un Moigne ſerra pris pur terme de ſa vie natural, ſinon que il ſoit deraigne per la ley de ſaint Eſgliſe. Et il eſt tenus per ſon Religion de gard ſon cloyſter, &c. Et ſi le Seignior luy puiſſoit prender hors de ſa meaſon, donques il ne

his villein, and ſeiſe his goods, &c. But it ſeemeth that if the Villein enter into Religion, & is profeſſed, that the Lord may not take nor ſeiſe him, becauſe he is dead in Law; no more then if a free-man taketh a Nief to his wife, the Lord cannot take nor ſeiſe the wife of the husband, but his remedy is to have an Action againſt the husband, for that he took his Nief to wife without his licence and will, &c. And ſo may the Lord have an Action againſt the Sovereign of the houſe which taketh and admitteth his villein to be profeſſed in the ſame houſe without the licence and leave of the Lord, and he ſhall recover his damages to the value of the villein. For he which is profeſſed a Monk ſhall be a Monk, and as a Monk ſhall be taken for term of his natural life, unleſſe he be deraigned by the Law of holy Church. And he is bound by his Religion to keep his Cloyſter, &c. And if the Lord might take him out of his houſe, nor hath bowed thoſe three things above ſpecified.

¶ (b) *Enter en Religion, & eſt profeſſe.* That is intended, (as hath bin ſaid) when he is regular and profeſt under certain rules, as to become one of the four orders of Friers, (that is to ſay) Freres Minors, Auguſtines, Preachers, or Carmelites, or become a Monk, Canon, or Nun, &c. Qui ad vivendum regulariter ſe aſtringunt, five ſunt Monachi, five Canonici regulares five ſanctimoniales. For all theſe are regular and Votaries, and are dead perſons in Law; but ſo are no the ſecular perſons, as Prebends, Parſons, Vicars, &c.

(b) Britton c.31. fol.79. Doctor & Stud. fol.141.

4 H.4. cap.17.

And therefore it is holden in our Books, (c) that if a ſecular Prieſt taketh a Wife, and hath iſſue and dieth, the iſſue is lawfull and ſhall inherit as heir to his Father, &c. for, as it was then holden, the marriage was not void, but voidable by divorce, and after the death of either party no divorce can be had.

(c) 21 H.7.39. 19 H.7. tit. baſtardy 33. 5 E.2. tit. Nonability 26. 47 E.3. Ca. ult.

But if a man marrieth a Nun, or a Monk marrieth, theſe marriages were holden void, and the iſſues baſtards, becauſe, as it was then holden, the marriage was utterly void, for that the Nun and the Monk (as Littleton here ſaith) were dead perſons in Law. And that is the reaſon yielded by Littleton, wherefore a Villein being profeſſed in Religion cannot be ſeiſed by the Lord, becauſe he is dead in Law; and yet his blood or bondage is not thereby altered, but his perſon in reſpect of his profeſſion onely privileged. (d) In decretalibus ſtatutum eſt quod nullus Epiſcopus ſpurios aut ſervos, donec à Dominis ſuis fuerint manumiſſi, ad ſacros ordines promovere præſumat. But notwithſtanding his perſon is privileged till he be diſgraded. And ſo it is holden in our old books. (e) If a villein

(d) Glanv. lib.5. cap.5. Britton fol.79. & 82.

(e) Fleta lib.1. cap.44. Britton ubi ſupra.

lein be made a Knight, for the honour of his degree his perſon is priviledged, and the Lord cannot ſeiſe him untill he be diſgraded. Nullam vilem perſonam, natione ſpurium, vel ſervilis conditionis, ad militiæ ſtrenuitatis ordinem promoveri licebit; ſed cum à Dominis ſuis petantur ut nativi, ipſis primo degradatis, ſtatim ad judicium procedatur.

viveroit come un mort perſon, ne ſolonque ſon Religion, le quel ſerroit inconvenient, &c.

then he ſhould not live as a dead perſon, nor according to his religion, which ſhould be inconvenient, &c.

(f) F.N.B. 78. b. 30 E.1. tit. Villen. 46. 33 E.3. ib. 21. 18 E.2. ib. 30. 46 E.3.6. 4 E.4.25. 1 H.4.6. 13 E.1. Villen. 36. 18 Aſſ.10. Doct. & Stud. 141. Mirr. cap.2. Sect.18. acc.

¶ *Si un frank home prent un niefe.* (f) Some have holden, that by this marriage the wife ſhall be free for ever: but the better opinion of our Books is, that ſhe ſhall be priviledged during the coverture onely, unleſſe the Lord himſelf marrieth his Nief, and then ſome hold that ſhe ſhall be free for ever.

If a Nief be regardant unto a Mannor, and ſhe taketh a freeman to husband by licence of the Lord, and the Lord maketh a feoffment in fee of the Mannor, the husband dieth; the Feoffee ſhall not have the Nief, but the Feoffor, for that during the marriage ſhe was ſevered from the Mannor. And ſo is the Book 29 Aſſ. (which is falſly printed) to be underſtood.

(g) 16 H.3. Nuper obiit 17. 8 H.3. breve 789.

(g) If two Coparceners be of a Villein, and one of them taketh him to husband, ſhe and her husband ſhall not have a Nuper obiit againſt her Coparcener, but after the deceaſe of her husband ſhe ſhall.

(h) Vide Britton fol. 82. Forteſc. c.43. 46 E.3.6. a.

¶ (h) *Mes ſon remedie eſt daver un action vers le Baron, &c.* Albeit marriage is lawfull, yet when it worketh a prejudice to a third perſon, an action in this caſe lieth againſt the husband to the value of his loſs. And albeit he did not know her to be a Nief, yet the action lieth againſt him; for he muſt take notice thereof at his perill: (i) unleſs ſhe be out of the ſervice of the Lord, and vagrant, and then if one not knowing her to be a Nief marrieth her, ſome ſay that in that caſe no action lieth againſt the husband. (k) And likewiſe the Lord ſhall have an action againſt thoſe that were the means to make the Villein a Knight.

(i) 7 R.2. tit. barr.240.

(k) Britton fol.82. b.

31 H.6. cap.5. 12 H.7.c.7. 11 H.4.5. b.

¶ *Soveraigne.* Præcipuus, Chiefe: as here, Soveraigne del meaſon is the chief of the houſe.

31 H.8. cap.29.

¶ *Si non que il ſoit deraigne.* This word (deraigne) cometh of the French word derayer, or deraigner, that is to ſay, to diſplace, or to turn one out of his order; and hereof cometh deraignment, a diſplacing or turning out of his order. So when a Monk is deraigned, he is degraded, and turned out of his order of Religion, and become a Lay-man.

40 Aſſ.27. per Finchden.

¶ *Le quel ſerra inconvenient.* Ab inconvenienti is a good argument in Law, as Littleton often obſerveth. And here Littleton concludeth that the Lord cannot take a Monk out of his houſe, for that it ſhould be inconvenient, which Littleton here ſheweth, for divers reaſons, and therefore unlawfull. And the inconvenience is, that where a man of Religion ſhould live according to his profeſſion in Religion, by the taking of him out he ſhould not.

¶ *Si le Seignior luy puiſſoit prender, &c.* By this it appeareth, that if a man detaineth a Villein in his houſe, the Lord of the Villein may take him out of the houſe; for here the impediment wherefore the Lord could not take him out of the houſe was, for that the Villein was a Monk profeſſed. And ſo in caſe of the Wardſhip here next following.

Sect. 203.

¶ *Briefe de Raviſhment de garde.* This Writ is given by the Statute of W.2. cap. 35. in verbis conceptis: the words of which Writ be, that the defendant, Talem hæredem, cujus maritagium ad ipſum A.

¶ En meſme le manier eſt, ſi ſoit Gardeine en chivalrie de corps & de fre dun enfant deins age, ſi lenfant quant

IN the ſame manner it is, if there be a Gardian in Chivalrie of the body and land of an Infant within age, if the Infant

il vient al age de 14. ans entra en Religion, & eſt profeſſe, le Gardein nad auter remedy (quant a le garde de le corps) forſque briefe de Raviſhment de garde envers le Sovereign de le meaſon. Et ſi aſcun eſtreant de plein age, que eſt coſin & heire del enfant, enter en le terre, le gardein nad aſcun remedie quant al garde de la terre, pur ceo que lentrie del heire lenfant eſt congeable en tiel caſe.

when he comes to the age of 14. years entreth into Religion, and is profeſt, the Gardian hath no other Remedy (as to the wardſhip of the body) but a Writ of Raviſhment *de garde* againſt the Sovereign of the houſe. And if any being of full age, who is couſin and heir of the Infant, entreth into the land, the Gardian hath no remedy as to the wardſhip of the land, for that the entry of the heir of the Infant is lawful in ſuch caſe.

perrinet, &c. rapuit & abduxit, &c. contra pacem. Now Rapere ſignifieth properly to take away by violence and force. And when the Sovereign took and admitted the Ward into his houſe to be profeſſed, this in judgment of Law is a Waſhment of the Ward, and as it appeareth in our books, before the ſaid Statute there lay a general action of treſpaſs in that caſe. Lib. 9. Doctor Huſſey's Caſe, fol. 72.

¶ *Apres lage de* 14. *ans, &c.* Our Author mentioneth this age, becauſe it is prohibited by the Statute of 4 H. 4. that no child ſhall be received into any houſe of Religion before that age, without conſent of his parents and gardians, &c. 4 H. 4. cap. 17.

¶ *Le gardeine nad aſcun remedie, &c.* Here it appeareth that by the profeſſion of the Ward the Lord loſeth the Wardſhip of the land, becauſe he is Civiliter mortuus, a dead man in Law, and cannot hold any inheritance; neither can the Gardian continue the Wardſhip of the land, becauſe by the civil death of the Ward the inheritance is deſcended to another, who is either to be in Ward, or pay Relief. Now as in this caſe the Gardian hath Damnum, but it is abſque injuria, becauſe he loſeth the Wardſhip of the land by act of Law, viz. the deſcent thereof to another; and therefore the Law giveth to him no remedy in this caſe, neither by any formed Writ, nor by Action upon his caſe; for Littletons words are general, (he hath not any remedy.)

Sect. 204.

¶ Item en mults & divers caſes le Sñr poit faire manumiſſion & enfranchiſement a ſon Villeine. Manumiſſion eſt proprement, quant le Sñr fait un fait a ſon Villein de luy enfranchiſer per hoc verbum (Manumittere) quod idem eſt quod extra manum vel extra poteſtatem alterius ponere. Et pur ẽ que per tiel fait le villeine

ALſo in many and divers caſes the Lord may make manumiſſion and enfranchiſement to his Villein. Manumiſſion is properly, when the Lord makes a Deed to his Villein to enfranchiſe him by this word (*Manumittere*) which is the ſame as to put him out of the hands and power of another. And for that that by ſuch Deed

¶ M *Anumiſſion.* (l) Manumittere, quod idem eſt quod extra manum vel poteſtatem ponere. (l) Glanvil lib. 5. cap. 5. Brit. fo. 78, &c. 82. 97. 110. Fleta lib. 3. cap. 13. & lib. 2. cap. 44.

Quia quamdiu quis in ſervitute eſt, ſub manu & poteſtate Domini ſui eſt.

Quia in poteſtate Domini ſui eſt, in manu domini ſui eſſe dicitur; ſed poſtquam manumiſſus eſt, ab illo liberabitur, ergo dicitur quaſi extra manum, id eſt, extra poteſtatem Domini ſui miſſus. And here is to be noted (as in many other places is obſerved) what regard Littleton hath to the true Etymologies of words.

¶ (m) *Enfranchiſement.* (Hereby Littleton explaineth Manumiſſion.) It is (m) Mirror cap. 2. Sect. 28.

is derived from the French word Franchiſe, that is Liberty; and in the Common Law it hath divers ſignifications: Sometimes the incorporating of a man to be free of a Company or Body Politick, as a freeman of a City, or Burgeſs of a Borough, &c. ſometimes to make an Alien a Denizon, and here to manumiſe a villain or bondman. So as this word (Enfranchiſement) is more general then Manumiſſion, for that is properly applied to a Villain; and therefore every Manumiſſion is an Infranchiſement, but every Infranchiſement is not a Manumiſſion. (n) There be two kinds of Manumiſſions, one expreſs, and the other implied. Expreſs, when the Villain by deed, in expreſs words, is manumiſed and made free: the other implied, by doing ſome act that maketh in judgment of Law the Villain free, albeit there be no expreſs words of Manumiſſion or Infranchiſement. (o) If a Villain be manumiſed, albeit he become ingrateful to the Lord in the higheſt degree, yet the Manumiſſion remains good: and herein the Common Law differeth from the Civil Law, for, Libertinum ingratum leges civiles in priſtinam redigunt ſervitutem; ſed leges Angliæ ſemel manumiſſum ſemper liberum judicant, gratum & ingratum.

eſt mis hors de la maine & de la poier ſon Seignior, il eſt appel' Manumiſſion. Et iſſint chelcun maner de enfranchiſement fait a un villein poit eſtr dit Manumiſſion.

the Villein is put out of the hands and out of the power of his Lord, it is called Manumiſſion. And ſo every manner of infranchiſement made to a Villein may be ſaid to be a Manumiſſion.

(n) Mirror cap. 2. ſect. 18.

(o) Forteſc. cap. 46.

There be alſo ſome caſes where the Villain ſhall be privileged from the ſeiſure of the Lord, albeit he be not abſolutely manumiſed or infranchiſed. Sometimes ratione loci; (p) as if a Villain remain in the ancient demean of the King a year and a day without claim or ſeiſure of the Lord, the Lord cannot have a Writ of Nativo habendo, or ſeiſe him ſo long as he remains and continues there: and the reaſon of this was, in reſpect of the ſervice he did to the King, in plowing and tillage of the demeans and other labours of husbandry for the Kings benefit. And herewith agree old books, (q) which ſay, that this immunity was ſometime granted by common conſent to the King for his profit, and for the help or eaſe of his Villains. (r) If a Villain be a Prieſt of the Kings Chappel, the Lord cannot ſeiſe him in the preſence of the King, for the Kings preſence is a privilege and protection for him. Sometime ratione profeſſionis; (ſ) as if a Villain be profeſſed a Monk, or a Nief a Nun, as hath been ſaid. (t) Sometime (as ſome have ſaid) ratione dignitatis, as if the Villain be made a Knight, &c. Sometime ratione matrimonii: as if a Nief marry a freeman, ſhe is privileged during the marriage, but not abſolutely enfranchiſed; for if her husband die, ſhe is Nief again, unleſſe the Lord himſelf marrieth the Nief, and then ſhe is enfranchiſed for ever, as hath been ſaid before. And it ſhall not be amiſſe to obſerve the wiſdom of our Ancients, with what ſolemnity (for more ſurety thereof) Manumiſſions were made. Qui ſervum ſuum liberat, in Eccleſia, vel mercato, vel comitatu, vel hundredo, coram teſtibus & palam faciat, & liberas ei vias, & portas conſcribit apertas, & lanceam & gladium, vel quæ liberorum arma, in manibus ei ponat. Our Author having ſpoken of an expreſſe Manumiſſion, here follow infranchiſements in Law.

(p) 39 E. 3. 6. b. F.N.B. 79. a.

(q) Glanvil lib. 5. cap. 5. Fleta lib. 2. cap. 44. Brit. f. 79. Mir. c. 2. ſect. 18.

(r) 27 Aſſ. p. 49.

(ſ) Glanvil lib. 5. cap. 5.

(t) Britton ubi ſupra.

Lib. Rub. cap. 78.

Sect. 205.

¶ FOR when the Lord enableth the Villain to have an action againſt him, as for debt or annuity, &c. or giveth to the Villain a certain and fixed eſtate in Lands, Tenements, or Hereditaments, as a Leaſe for years, this amounteth to an infranchiſement, not only during the years, but for ever; (u) and albeit the leaſe be made to the Villain without Deed, yet it is an infranchiſement for ever.

¶ Auxy ſi le Sr̃ fait a ſon villein un Obligation d certeine ſomme dargent, ou grank a luy per ſon fait un annuitie, ou leſſa a luy per ſon fait terres ou tenements pur terme des ans, le villein eſt enfranchiſe.

ALſo if the Lord maketh to his Villein an Obligation of a certain ſumme of money, or granteth to him by his Deed an annuity, or lets to him by his Deed lands or tenements for term of years, the Villein is infranchiſed.

(u) 30 E. 3. tit. vil. 25. 21 H. 7. 13.

Sect.

Sect. 206.

¶ Auxy ſi le Seignior fait un feoffment a ſon villein daſcun terres ou tenements p fait, ou ſans fait, en Fee ſimple, Fee taile, ou pur term de vie ou ans, & a luy livera ſeiſin, ceo eſt un enfranchiſement.

Alſo if the Lord maketh a feoffment to his Villein of any Lands or Tenements by Deed, or without Deed, in Fee ſimple, Fee taile, or for term of life or years, and delivereth to him Seiſin, this is an Infranchiſement.

This is evident, and agreeth with our Books. Vide 24 E. 3. 32. 12 H. 3. tit. Vil. 42.

Sect. 207.

¶ Mes ſi le Sr̃ fait a luy un leaſe des terres ou tenements, a tener a volunt le Sr̃, per fait ou ſans fait, ceo neſt alcun enfrãchiſement, pur ceo q̃ il nad alcun maner d certaintie ne ſuertie de ſon eſtate, mes le Sr̃ luy poit ouſter quãt il voilet.

But if the Lord maketh to him a Leaſe of lands or tenements, to hold at will of the Lord, by deed or without deed, this is no enfranchiſement, for that that he hath no manner of certainty or ſurety of his eſtate, but the Lord may ouſt him when he will.

¶ *Per fait.* So as a Deed made to a Villein by the Lord is no enfranchiſement, when the Deed transferreth no certain or fixed eſtate, but revocable at the Lords will. If the Lord releaſe to his Villein all his right in Black acre, and the villein is not thereof ſeiſed, this is no infranchiſement, becauſe it is void, and can give no cauſe of action: if the Lord attorneth to his Villein, this is no infranchiſement. 11 H. 7.

Sect. 208.

¶ Auxy ſi le Sr̃ ſuiſt envers ſon villeine un Præcipe quod reddat, ſil recover ou ſoit nonſue apres appearance, t eſt un manumiſſion, pur ceo q̃ il puiſſoit loyalment enter en la terre ſans tiel ſuit. En meſm le manner eſt, ſil ſuiſt envers ſon villein un action d debt, ou daccount, ou d covenant,

Alſo if the Lord ſueth againſt his villein a *Præcipe quod reddat*, if he recover or be nonſuit after appearance, this is a manumiſſion, for that he might lawfully have entred into the land without ſuit. In the ſame manner it is, if he ſue againſt his villein an action of debt, or account, or of covenant, or of

¶ *SI Seignior ſuiſt envers ſon villein un* Præcipe quod reddat, *&c. ceo eſt un manumiſſion.* And the principal reaſon hereof is, for that by this ſuit he enableth the villein to be a perſon able to render him the land by courſe of Law, where the Lord without any ſuch ſuit might have entered. (1) But if tenant in tail be of a Mannor whereunto a Villein is regardant, and infeoffeth the villein of the Mannor, and dieth, the iſſue ſhall have a Formedon againſt the Villein, and after the Recovery of the Mannor, he

(2) 24 E. 3. Diſcont. 16. Vide Britton 73. & 126.

he ſhall ſeiſe the Villein. And the reaſon is, for that he could not ſeiſe the Villein till he had recovered the Mannor, which was the principal, and at the time of the Writ brought he was no Villein.

The Tenant infeoffs the Villein of the Lord and an eſtranger upon colluſion; in this caſe although the Lord may enter upon the Villein for the moiety, yet may he have a Writ of Ward againſt them both without infranchiſement of the Villein; for if the Lord ſhould enter upon the Villein, then ſhould his ſeigniory be ſuſpended, and then could not he have a Writ of Ward againſt the other.

The Lord, upon a Writ of Covenant brought by the Villein, levies a fine to his Villein of Land which is ancient Demeſne, the Lord of whom the Land is holden reverſeth the fine in a Writ of deceit: albeit the authority and juriſdiction of the Court is diſproved, and that the Lord of the Villein ſhall be reſtored to the Land given by the fine; yet it is an enfranchiſement, for that he anſwered to the Writ of Covenant, and the fine was voidable, and not void; and therefore being once an enfranchiſement, it cannot be avoided by the reverſing of the fine.

¶ *Soit nonſue: (id eſt) non eſt proſecutus breve ſuum.* For by the Law the Plaintiff is firſt Agent at every continuance, and therefore the Record ſaith, Quod petens ſeu querens (naming them) obtulit ſe, who if he be called, and make default, then he is ſaid to be Nonſuit, id eſt, non eſt proſecutus, &c.

By Littleton here it appeareth, that there is a Nonſuit before appearance, at the return of the Writ, or after appearance at ſome day of continuance. (x) The difference between a Nonſuit and a Retraxit on the part of the Demandant or Plaintiff is this: A Nonſuit is ever upon a demand made when the Demandant or Plaintiff ſhould appear, and he makes default: a Retraxit is ever when the Demandant or Plaintiff is preſent in Court, (as

(x) Lib. 8. fol. 58. 62. Bechers caſe. 3 H. 6. 13. Brook tit. Nonſuit 1. 8 H. 6. 7. 50 E. 3. 12.

ou de Treſpaſſe, ou de hujuſmodi, ceo eſt un enfranchiſement, pur ceo que il puiſſoit empriſon le villein, & prender ſes biens ſans tiel ſuit. Mes ſi le Seignior ſuiſt ſon villeine per appeale d felony, ou il fuit endict de ceo devant, ceo ne enfrāchiſera pas le villeine, coment q̄ le matter d lappeal ſoit trove encounter le Sr̄, pur ceo que le Seignior ne puiſſoit aver le villeine deſtre pendue ſās tiel ſuit. Mes ſi le Villeine ne fuit endict de meſme le felony devant lappeale ſue envers luy, & puis eſt acquite de ceſt felony, iſſint que il recovera dammages envers ſon ſeignior pur le faux appeale, donques le villeine eſt enfranchiſe, pur la cauſe de le judgment de dammages a luy deſtre doñ envers ſon ſeignior. Et pluſors auſs caſes & matters y ſont per queux un villeine poit eſtre enfranchiſe envers ſon Seignior, &c. Sed de illis quære.

Treſpaſſe, or of ſuch like, this is an infranchiſement, for that he might impriſon the Villein, and take his goods without ſuch ſuit. But if the Lord ſue his Villein by Appeal of Felony, where he was indited of the ſame before, this ſhall not infranchiſe the villein, albeit that the matter of appeal be found againſt the Lord, for that the Lord could not have the Villein to be hanged without ſuch ſuit. But if the Villein were not indited of the ſame Felony before the appeal ſued againſt him, and afterward is acquited of this Felony, ſo as he recover dammages againſt his Lord for the falſe appeal, then the Villein is infranchiſed, becauſe of the judgement of dammages to be given unto him againſt his Lord. And many other caſes and matters there be by which a Villein may be infranchiſed againſt his Lord, &c. *But enquire of them.*

(as regularly he is ever by intendment of Law untill a day be given over, unleſſe it be when a verdict is to be given, for then he is demandable.) And this is in two ſorts, one Privative, and the other Poſitive. Privative, as upon demand made, that he make default, and depart in deſpite of the Court; and then the entry is, (y) Et poſtea eodem die devenit ad barram prædict. tenens, & præd' petens tunc ſolenniter exactus non venit, ſed à ſecta ſua prædicta in contemptum Curiæ ſe retraxit, ideo conſideratum eſt, &c. Poſitive, as when the entry is, Et ſuper hoc idem querens dicit, quod ipſe non vult ulterius placitum ſuum prædictum proſequi, ſed abinde omnino ſe retraxit, &c. ideo, &c. Another form thereof is, quod idem querens fatetur ſe (ſeu cognovit ſe) ulterius nolle proſequi verſus prædict. defend. &c. de placito præd'. (z) A departure in deſpite of the Court is on the part of the Tenant, and is, when the Tenant or Defendant after appearance, and being preſent in Court, upon demand makes departure in deſpite of the Court; and then the entry is, Et prædict' tenens ſeu defendens, licet ſolenniter exactus, non revenit, ſed in contemptum Curiæ receſſit, & defaltam fecit, ideo, &c. It is called a Retraxit, becauſe that word is the effectual word uſed in the entry, as before it appeareth, and it is ever on the part of the Demandant or Plaintiff. (a) Another difference between a Retraxit and a Nonſuit is, that a Retraxit is a bar of all other Actions of like or inferiour nature: Qui ſemel actionem renunciavit, amplius repetere non poteſt. But regularly a Nonſuit is not ſo, but that he may commence an action of like nature, &c. again. For it may be that he hath miſtaken ſomewhat in that action, or was not provided of his proofs, or miſtaken the day, or the like. But yet for ſome ſpecial reaſons Nonſuit in ſome actions is peremptory.

(y) Tr. 5 H.6. Rot. 320. in Com. Banco.

(z) F.N.B. 78. f. & 108. d. 19 E. 2. Villen. 31.

(a) Lib. 8. ubi ſupra.

In a Quare impedit, if the Plaintiff be Nonſuit after appearance, the Defendant ſhall make a title, and have a Writ to the Biſhop; (b) and this is peremptory to the Plaintiff, and is a good bar in another Quare impedit: and the reaſon is, for that the Defendant had by judgment of the Court a writ to the Biſhop, and the Incumbent that cometh in by that Writ ſhall never be removed, which is a flat bar as to that preſentation. And of this opinion is Littleton in our Books. And the ſame Law, and for the ſame reaſon, it is in the caſe upon a diſcontinuance.

(b) 5 E. 3. 35. 2 H. 5. 31 H.6.15. 22 H.6.44,45. 33 H.6. 1. 55. 19 E.4. 9. 21 E.4.2.b.&c. F.N.B.38.k. Lib.7. fol.27.b. Sir Hugh Portmans caſe.

(c) In a Writ De Nativo habendo, Nonſuit after appearance is peremptory, for thereby the Villein is enfranchiſed. And ſo it is if two be Plaintiffs in a Nativo habendo, if one be nonſuit, this is the nonſuit of both, and no ſummons and ſeverance doth lye in that caſe, albeit it be a real action. And this is in favorem libertatis; for in a Libertate probanda, Nonſuit after appearance is not peremptory, neither is the nonſuit of the one the nonſuit of both.

(c) 6 E.2. Vill.26. 12 E. 2. ibid. 28. 19 E. 2. ibid. 31. F.N.B.78.c. 4 E.2.Nonſuit 29.

(d) Nonſuit in an appeal of Murder, Rape, Robbery, &c. after appearance is peremptory: and this is in favorem vitæ; for if the Defendant be acquited, and take out proceſſe upon the Statute of W. 2. againſt the Abbettors, or if he purchaſe his original writ, for that cauſe he may be nonſuit.

(d) 9 H.4. 1. 12. Stamf. Pl. Cor. 148. a. & 171. c. 22 Aſſ. 97. Fitz. Cor. 184. 22 E. 3. 6. 47 E. 3. 16. 7 H.7.5. 40 E.3. Dam. 77. 17 E.2. Coron.386. 3 E.2. Action ſur Leſtat. 28.

(e) If the Plaintiff in an appeal of Mayhem be Nonſuit after appearance, it is peremptory, for the Writ ſaith, Felonice maihemavit, and therefore the nonſuit is peremptory.

(e) 43 Aſſ. 39. 40 Aſſ. 1.

(f) In an attaint, if the Plaintiff after appearance be Nonſuit, it is peremptory: and the reaſon is for the faith that the Law gives to the verdict, and for the terrible and fearful judgment that ſhould be given againſt the firſt Jury if they ſhould be convicted: and therefore upon the Nonſuit, the Plaintiff ſhall be impriſoned, and his pledges amerced. But if the proceſs in an Attaint be diſcontinued, the Plaintiff may have another writ of Attaint, becauſe upon the Nonſuit there is a judgment given, but not upon the diſcontinuance. Note, it is truly ſaid, that Exceptio probat regulam, for theſe caſes excepted ſtand upon their ſpecial and particular reaſons, and fall not within the general reaſon of the rule. It is a general rule, that Nonſuit before appearance is not peremptory in any caſe, for that a ſtranger may purchaſe a Writ in the name of him that hath cauſe of action, as ſhall be ſaid hereafter in this ſection.

(f) 32 Aſſ. 13. 19 Aſſ. 13. 20 E.3. attaint 42. 22 E.3. 7. F.N.B. 108. d.

(g) In real or mixt actions the nonſuit of one Demandant is not the nonſuit of both, but he that makes default ſhall be ſummoned and ſevered: but regularly in perſonal actions, the nonſuit of one is the nonſuit of both; unleſs it be in certain particular caſes.

(g) 11 H.6. 23. 35. F.N.B. 35. b. 19 E.3. tit. Sever. 14. 3 E. 2. Nonſuit 18. 19 E.3. Sev. 16. 12 E. 3. lib. 38 E.3. 9. 29 H.6. 45. 38 E. 3. 35. 41 E.3.Nonſuit 10. 45 E.3.10. 2 H.4. 7.

(h) In perſonal actions brought by Executors there ſhall be Summons and ſeverance, becauſe the beſt ſhall be taken for the benefit of the dead. And ſo it is in an action of Treſpaſs, as Executors for goods taken out of their own poſſeſſion. Like Law in account, as Executors by the receit of their own hands.

(h) 42 E.3. 13. 48 E.3 14. 28 H.6.3. 11 E.2. Sev. 26. 15E.3.ibid.15.18 E.3.ibid.28. 3 E.3. ibid. 20. 7 E.3. 12.

(i) In an Audita querela concerning the perſonalty, the nonſuit of the one is not the nonſuit of the other, becauſe it goeth by way of diſcharge and freeing of themſelves, and therefore the default of the one ſhall not hurt the other.

(i) 15 E.3. Sev. 23. Lib.6. fol.25. Ruddocks caſe.

(k) In a Quid juris clamat, the nonſuit of the one is the nonſuit of both, becauſe the Tenant cannot attorn according to the grant.

(k) 20 E. 3. Severance 17.

(l) Some actions follow the nature of thoſe actions whereupon they are grounded, as the Writs of Error, Attaint, Scire facias, and the like. If a real action be brought by ſeveral Præcipes againſt two or more, if the Demandant be Nonſuit againſt one, he is Nonſuit

(l) 47 E.3. 6. b. 47 Aſſ. 3. 29 Aſſ. 34. 7 H.4. 45. 34 H.6.31. 25 H.6.19. 29 E. 3. 37. Lib. 6. ubi ſupra. 22 H. 6. 42. 4 E. 4. 33. 19 E. 2. Nonſuit 32. 18 E.3. ibid. 31. 20 E.3. ibid. 26,27. 19 E. 3. ibid. 12. 3 E.3. ibid. 17. 38 E.3.9. 20 H.6.45. 44 E.3.16. 19 E.3. Severance 16.

againſt all; for as to the Demandant it is but one Writ under one Teſte. Note, Severance is twofold: viz. by Summons ad ſequendum ſimil, and that is when one of the Demandants or Plaintiffs never appeared; and by award of the Court of Nonſuit without any ſummons, and that is after appearance.

(m) 6 R.2. Nonſuit 13. 25 H.8. Nonſuit, Br. 68. 20 H.7. 5.

(m) The Kings Majeſty cannot be Nonſuit, becauſe in judgment of Law he is ever preſent in Court; but the Kings Atturney, Qui ſequitur pro Domino Rege, may enter an ulterius non vult proſequi, which hath the effect of a Nonſuit: but in an information by an Informer, qui tam, &c. the Informer may be nonſuited.

(n) 2 H.4. cap.7. 3 E.3. 21. 47 E.3. 1,2. 3 E. 4. fol. 11.

(n) At the Common Law, upon every continuance or day given over before judgment, the Plaintiff might have been Nonſuited; and therefore before the Statute of 2 H. 4. after verdict given, if the Court gave a day to be adviſed, at that day the Plaintiff was demandable, and therefore might have been Nonſuit, which is now remedied by that Statute.

(o) 9 H.5. 5. 8 R. 2. Nonſuit 34.

(o) But after Demurrer in Law joyned, if the Court doth give a day over, at that day the Demandant or Plaintiff is demandable, and therefore may be Nonſuit, for that is not holpen by any Statute.

(p) 1 H.7.1. 21 E.3.32. Li.11. fol. 39. 41. Metcalfes caſe.

(p) And after an award to account the Plaintiff may be Nonſuit: and ſo note a diverſity between an Interlocutory award of the Court, and a final judgment.

By theſe few inſtructions you ſhall the more eaſily underſtand the books of Tearms and Years, and other authorities of Law. And here (to return to Littleton) it is to be noted, that albeit the Lord be Nonſuit, yet the infranchiſement of the Villein doth remain, for that grew by the appearance to the Writ, and cannot be taken away by the Nonſuit ſubſequent. So it is if the Writ do abate, yet the infranchiſement remains.

(q) 7 H.4 8. 11 H.4.13.9E.4. 23. 7 H.4.8.2. 7 H.7.6.b. 5 H.7.15.

¶ (q) *Apres appearance.* For otherwiſe a ſtranger may purchaſe a Writ in his name; and therefore Littleton materially added theſe words, after appearance.

¶ *Præcipe.* There be three kinds of Præcipes. 1. A Præcipe quod reddat, whereof Littleton here ſpeaketh. 2. A Præcipe quod permittat. And, 3. A Præcipe quod faciat, whereof you may read plentifully in the Regiſter, and Fitzherberts Natura Brevium, and belongs not properly to this Treatiſe.

¶ *Account.* Of this ſufficient hath been ſaid before.

Vid. Sect. 748. Lib.4. fol.80. Nokes caſe. F.N.B. 145.

¶ *Covenant,* Conventio. Hereof there be two kinds, viz. a Covenant perſonal, and a Covenant real: and a Covenant in Deed, and a Covenant in Law.

(r) W.2. cap. 12. 22 Aſſ. p.39. 33 H.6. 2. 14 H.7. 2. 40 Aſſ. 18. 40 E.3. 42.

¶ *Ou il fuit endite de ceo.* (r) For if the Villein be not firſt indicted of it, then, upon the acquital of the Villein, the Villein ſhall recover damages againſt the Lord by the Statute of W.2. Quia multi per malitiam, &c. and conſequently ſhall be enfranchiſed. But if the Villein be formerly endicted of the Felony, then though the Villein be acquited upon the Appeal, he ſhall recover no damages againſt the Lord. For whereſoever the Lord giveth to the Villein a juſt cauſe of Action, he is enfranchiſed.

(ſ) Kelway 134.

(ſ) And therefore if the Lord kill his Villein, his ſon and heir ſhall have an Appeal, and thereby his heir ſhall be enfranchiſed, becauſe the offence of the Lord gave to the heir a juſt cauſe of action againſt the Lord.

Sect. 209.

¶ *Que il ad eſtre Cuſtome, &c.*

Here ſome may object, that ſuch a cuſtome may have a lawful beginning; for Littleton in the beginning of this Chapter, Sect. 174. alloweth that (a) a freeman may take lands of the Lord to be holden of him, that is, to pay a fine for the marriage of his Son or Daughter: and therefore (b) ſome have thought that ſuch a cuſtome generally within the Mannor ſhould be good. But the

(a) 10 E.3.22. Roger de Vaks caſe. 15 E.3. Aid 33.

(b) 34 H.6. 15. a. per Litt.

¶ Item ſi Seignior dun manor voile preſcriber, que il ad eſtre cuſtome deins ſon manor de temps dont memory ne curt, que chescun Tenant deins meſme le mannor, q̄ maria ſa file a aſcun home ſans licence de le ſeignior del man-

Alſo if the Lord of a Mannor will preſcribe, that there hath been a Cuſtome within his Mannor time out of minde of man, that every Tenant within the ſame Mannor, who marrieth his Daughter to any man without licence of the Lord of the

nor,

noz, ſerra fine, & ont faire fine, al Seignior del mannoz p̄ le temps eſteant, ceſt p̄ſcription eſt void; car nul doit faire tiels fines forſque tantſolement villeins. Car cheſcun franke home poit frankement marrier ſa file a que pleiſt a luy & ſa file. Et pur ceo que ceſt p̄ſcription eſt encounter reaſon, tiel p̄ſcription eſt void.

Mannor, ſhall make fine, and have made fine, to the Lord of the Mannor for the time being, this preſcription is void; for none ought to make ſuch fine but only Villeins. For every freeman may freely marry his daughter to whom it pleaſeth him and his daughter. And for that this preſcription is againſt reaſon, ſuch preſcription is void.

anſwer is, that though it may be ſo in a particular caſe upon ſuch a ſpecial reſervation of ſuch a fine upon a gift of land, yet to claim ſuch a fine by a general cuſtome within the Mannor, is againſt the frædome of a fræman, that is not bound thereunto by particular Tenure. But a cuſtome may be alledged within a Mannor, (b) That every Tenant (albeit his perſon be fræ) that holdeth in bondage, or by native tenure, the fræhold being in the Lord, ſhall pay to the Lord for the marriage of his daughter without licence a Fine: and it is called Marchet, as it were a Chete or Fine for marriage. And here Littleton ſaith, that none ought to pay ſuch fines but Villains, (that is) either

(b) 43 E. 3. 5. 14 H. 6. 25.

Villains of bloud, or fræmen holding in villenage or baſe Tenure. So note a diverſity betwæn a fræholder and a fræman holding in Villenage. Villains uſe to pay to their Lords in acknowledgment of their bondage for their ſeveral heads, and thereupon it is called Chevage, Chevagium, of the French word Chiefe, as it were the ſervice of the head. Of which Bracton ſaith, (c) Chivagium dicitur recognitio in ſignum ſubjectionis & dominii de capite ſuo. And ſometimes it is written Chivage, but more properly Chiefage. (d) Chevagium ſignifieth alſo a great Impoſition for any ſubject to take ſums of money or other gifts yearly in name of Chevage, becauſe they take upon them to be their chief heads or Leaders.

(c) Brac. lib. 1. cap. 10. Britton fol. 79. b.
(d) 27 Aſſ. 44.

¶ *Pur ceo que ceſt preſcription eſt encounter reaſon, ceo eſt voyd.* This contains one of the Maxims of the Common Law, viz. That all cuſtoms and preſcriptions that be againſt reaſon are void.

Sect. 210.

¶ MEs en l'County de Kent, ou fres & tenements ſont tenus en Gavelkind, la ou per le cuſtome & uſe de temps dont memoyr ne curt les fits males doient obelment enheriter, ceo cuſtome eſt allowable, pur ceo que il eſtoit obe aſcun reaſon: pur ceo que cheſcun fits eſt auxy graund gentlehome come leigne fits eſt,

BUT in the County of *Kent*, where Lands and Tenements are holden in Gavelkind, there where by the cuſtome and uſe out of mind of man the Iſſues male ought equally to inherit, this cuſtome is allowable, becauſe it ſtandeth with ſome reaſon: for every ſon is as great a Gentleman as the eldeſt ſon is, and perchance will grow

¶ EN (e) *le County de Kent.* For that in no County of England Lands (f) at this day be of the nature of Gavelkind of common right, ſaving in Kent only. But yet in divers parts of England, within divers Mannors and Seigniories, the like cuſtome is in force.

(e) Vide Leſtatute de conſuetudinibus Kanciæ ann. 21 E. 1. 2 E. 3. 12. 3 E. 3. 21. 38. 23 Aſſ. pl. 12. 8 E. 3. 42. b.
(f) Vide Mirror cap. 1. ſect. 3.

¶ *En Gavelkinde.* That is, Gave all kind: for this cuſtome giveth to all the ſons alike.

¶ *Les fits Males inheriter.* And this is the generall cuſtome extending to ſons. But yet (g) by cuſtome, when one brother dieth without iſſue, all the other

(g) 23 Aſſ. pl. 21.

other brethren may inherit.

¶ *Chescun fitz eſt auxy grande gentlehome come leigne fitz eſt.* By this it appeareth that Gentry and Arms is of the nature of Gavelkind, for they deſcend to all the ſons, every ſon being a Gentleman alike.

& per caſe a pluis grande honor & valour creſſera, ſil avoit rien p ſes Anceſtors, ou auterment peradventure il ne puiſſoit tielment creſſer, &c.

to greater honour and valour, if he hath any thing by his Anceſtors, or otherwiſe peradventure he would not encreaſe ſo much, &c.

Which Gentry and Arms do not deſcend to all the brethren alone, but to all their poſterity: but yet, Jure primogenituræ, the eldeſt ſhall bear as a badg of his birthright his Fathers Arms without any difference, for that as Littleton ſaith Sectione he is more worthy of bloud; but all the younger brethren ſhall give ſeveral differences, & additio probat minoritatem: and (h) hæreditas inter maſculos jure civili eſt dividenda.

(h) Forteſc. cap. 40.

¶ *Ou auterment peradventure il ne puiſſoit tielment creſſer.* The reaſon of this is rendred by the Poet:

Horace.

Haud facilè emergunt quorum virtutibus obſtat
Res anguſta domi.

31 H. 8. c. 3. V. 18 H. 6. c. 1.

But now by the Statute of 31 H. 8. a great part of Kent is made deſcendable to the eldeſt ſon, according to the courſe of the Common Law, for that by the means of that cuſtome divers ancient and great Families after a few deſcents came to very little or nothing.

In plures quoties rivos deducitur amnis,
Fit minor, ac undâ deficiente perit.

Sect. 211.

Vide Sect. 165.

¶ *Per cuſtome appel' Burgh Engliſh.* Of this cuſtome Littleton hath ſpoken before in the Chapter of Burgage. And in our Books there is a ſpecial kind of Borough English: (i) as, it ſhall deſcend to the younger ſon, if he be not of the half-bloud; and if he be, then to the eldeſt ſon.

(i) 32 E. 3. tit. Age 81.

(k) Mic. 10 Ja. Eliots Caſe, in Brieſe de Faux judgment.

(k) Within the Mannor of B. in the County of Berks there is ſuch a cuſtome, That if a man have divers daughters, and no ſon, and dieth, the eldeſt daughter ſhall only inherit; and if he have no daughters, but ſiſters, the eldeſt ſiſter by the cuſtome ſhall inherit, and ſometimes the youngeſt. And divers other cuſtomes there be in like caſes.

¶ Item, lou per cuſtome appel' Burgh Engliſh, en aſcun Burgh le fits puiſne inherita touts les tenements, &c. ceo cuſtome eſtoit ove aſt certeine reaſon, pur ceo que le fits puiſne, (ſil fault pere & mere) per cauſe de ſon juventute, poit le pluis meins de touts ſes freres luy meſme aider, &c.

ALſo where by the Cuſtome called Borrough Engliſh, in ſome Borrough the youngeſt ſon ſhall inherit all the Tenements, &c. this cuſtome alſo ſtands with ſome certain reaſon, becauſe that the younger ſon, (if he lack Father and Mother) becauſe of his young age, may leaſt of all his brethren help himſelf, &c.

(l) Brit. 187. b.

And herewith agreeth Britton, who ſaith, (l) De terres des ancients demeynes ſoit uſe ſo lonque le ancient uſage del lieu; dount en aſcun lieu le tient leu per uſage, que le heritage ſoit departable entre touts les enfants freres & ſores, & en aſcun lieu que le eigne avera tout, & en aſcun lieu que le puiſne frere avera tout.

¶ *Per cauſe de ſon juventute, poet le pluis meins de touts ſes freres luy meſme aider, &c.* Here by (&c.) are implied thoſe cauſes wherefore a youth is leſs able to aid himſelf, &c. which the Poet briefly and pithily expreſſeth thus:

Imberbis

Imberbis Juvenis tandem, Cuſtode remoto,
Gaudet Equis, Canibuſque, & aprici gramine Campi;
Cereus in vitium flecti, Monitoribus aſper,
Utilium tardus proviſor, prodigus æris,
Sublimis, cupiduſque, & amata relinquere pernix. Horace.

And again, no living creature more infirm then Man:

Nil homine infirmum tellus animalia nutrit
Inter cuncta magis——— Homer.

Sect. 212.

¶ MEs ſi home voile preſcriber, que ſi aſcuns aũs ſueront ſur les demeſnes de ſon mannor, la dammage ſeasants, que le Seignior del mannor pur le temps eſteant ad uſe eux de diſtreyner, & le diſtreſſe retaine tanque fine fuit fait a luy pur l'dammage a ſa volunt, ceſt preſcription eſt void; pur ceo que il eſt encounter reaſon, que ſi tort ſoit fait a un home, que il de ceo ſerra ſon Judge demeſne: Car per tiel voy, ſil avoit dammages forſque al value dun mail, il puiſſoit aſſeſſer ſa aver pur ceo C. l'. que ſerroit encounter reaſon. Et iſſint tiel preſcription, ou aſcun auk preſcription uſe, (ſi ceo ſoit encounter reaſon) ceo ne doit eſtre allow devant Judges: Quia malus uſus abolendus eſt.

But if a man will preſcribe, That if any Cattel were upon the demeans of the Mannor, there doing dammage, that the Lord of the Mannor for the time being hath uſed to diſtrein them, and the diſtreſſe to retain till fine were made to him for the dammages at his will, this preſcription is void; becauſe it is againſt reaſon, that if wrong be done any man, that he thereof ſhould be his own Judge: for by ſuch way, if he had damages but to the value of an half-peny, he might aſſeſſe and have therefore C. pound, which ſhould be againſt reaſon. And ſo ſuch preſcription, or any other preſcription uſed, if it be againſt reaſon, this ought not, nor will not be allowed before Judges: *Quia malus uſus abolendus eſt.*

¶ *Eſt encounter reaſon, que ſi tort ſoit fait a un home, que il de ceo ſerra ſon judge demeſne.* For it is a Maxime in Law, Aliquis non debet eſſe judex in propria cauſa. * And therefore a fine levied before the Bailiffs of Salop was reverſed, becauſe one of the Bailiffs was party to the fine, quia non poteſt eſſe judex & pars. 10 E.3.23. 4 E.3.14. 7 E.3.24. 38 E.3.18. 2 H.3.4. 3 H.4. 8 H.6.19. 5 H.7.9. b. * Hil. 4 H.4. Coram Rege, Salop.

¶ Malus uſus abolendus eſt. And every uſe is evill that is (as our Author ſaith) againſt reaſon; Quia in conſuetudinibus non diuturnitas temporis, ſed ſoliditas rationis, eſt conſideranda.

And by this rule cited by our Author, at the Parliament holden at Kilkenny in Ireland, Lionel Duke of Clarence being then Liuetenant of that Realm, the Iriſh cuſtomes, called there the Brehon Law, (for that the Iriſh call their Judges Brehons) was wholly aboliſhed, for that (as the Parliament ſaid) it was no Law, but a lewd Cuſtome, & malus uſus abolendus eſt. An. 40 E. 3. at Kilkenny. The Brehon Law. Vide Sect.265.

But our Student muſt know, that King John in the twelfth year of his Reign went into Ireland, and there, by the advice of grave and learned men in the Laws, whom he carried with him, by Parliament, de communi omnium de Hibernia conſenſu, ordained and eſtabliſhed, that Ireland ſhould be governed by the

the Laws of England: which of many of the Iriſh-men, according to their own deſire, was joyfully accepted and obeyed; and of many the ſame was ſoon after abſolutely refuſed, preferring their Brehon Law before the juſt and honourable Laws of England. Rex, &c. Baronibus, militibus, & omnibus libere tenentibus L. Salutem. Satis, ut credimus, veſtra audivit diſcretio, quod quando bonæ memoriæ Johannes, quondam Rex Angliæ, pater noſter, venit in Hiberniam, ipſe duxit ſecum viros diſcretos & legis peritos, quorum communi conſilio, & ad inſtantiam Hibernenſium, ſtatuit & præcepit leges Anglicanas in Hibernia, ita quod leges eaſdem in Scripturas redactas reliquit ſub ſigillo ſuo ad Scaccarium Dublin.

Rot. pat. 11 H.3. Lib.7. fol.22. b. Calvins caſe.

Rex Comitibus, Baronibus, militibus, & liberis hominibus, & omnibus aliis de terra Hiberniæ, ſalutem. Quia manifeſtè eſſe dignoſcitur contra coronam & dignitatem noſtram, & conſuetudines & leges regni noſtri Angliæ, quas bonæ memoriæ Dominus Johannes Rex, pater noſter, de communi omnium de Hibernia conſenſu teneri ſtatuit in terra illa, quod placita teneantur in curia Chriſtianitatis de advocationibus Eccleſiarum & Capellarum, vel de laico feodo, vel de catallis, quæ non ſunt de teſtamento vel matrimonio; Vobis mandamus, prohibentes quatenus hujuſmodi placita in curia Chriſtianitatis nullatenus ſequi præſumatis, in manifeſtum dignitatis & Coronæ noſtræ præjudicium; ſcituri pro certo, quod ſi feceritis, dedimus in mandatis Juſticiario noſtro Hiberniæ, Statuta curiæ noſtræ in Anglia contra tranſgreſſiones hujus mandati noſtri cum Juſtitia procedat, & quod noſtrum eſt exſequatur. In cujus, &c. Teſte Rege apud Winchcomb, 28. die Octobris, anno Regni noſtri 18. Et mandatum eſt Juſticiario Hiberniæ per literas clauſas, quod prædictas literas patentes publicè legi & teneri faciat.

Rot. pat. 18 H.3. M.17. N.21.

Rex, &c. Pro communi utilitate terræ Hiberniæ, & pro unitate terrarum, proviſum eſt, quod omnes leges & conſuetudines quæ in regno Angliæ tenentur, in Hibernia teneantur, & eadem terra eiſdem legibus ſubjaceat, ac per eaſdem regatur, ſicut Johannes Rex, cum illic eſſet, ſtatuit & firmiter mandavit. Ideo volumus, quod omnia brevia de communi jure quæ currunt in Anglia ſimiliter currant in Hibernia ſub novo ſigillo Regis. In cujus, &c. Teſte meipſo apud Woodſtock. Wherein it is to be obſerved, That union of Laws is the beſt means for the unity of Countries. (*) Una & eadem lex eſſe debet tam in Regno Angliæ quam Hiberniæ. (m) Terra Hiberniæ inter ſe habet Parliamentum, & omnimodas curias, prout in Anglia, & per idem Parliamentum facit leges, & mutat leges; & illi de eadem terra non obligantur per ſtatuta in Anglia, quia hii non habent milites Parliamenti.

Rot. pat. 30 H.3.

* Trin. 13 E.1. Coram Rege in Theſaur. in Iongo placito.
(m) 2 R.3. fol. 12. In camera ſtellata.
1 H.7.3.

By an Act of Parliament (called Poynings Law) holden in Ireland in the tenth year of Henry the ſeventh, it is enacted, That all ſtatutes made in this Realm of England before that time ſhould be of force and be put in ure within the Realm of Ireland, which (though it be by way of digreſſion) is not unneceſſary for our Student to know. But now let us hear our Author.

CHAP. 12. *Of Rents.* *Sect.* 213.

SOme have divided rents into four kinds; viz. rent ſervice, rent charge, rent diſtreinable of common right, (whereof ſomewhat ſhall be ſaid in this Chapter) and rent ſecke.

¶ *Rent*, in Latine Reditus, (a) by ſome Dicitur à redeundo, quia retro it, & quotannis redit. * And others ſay it is derived of reddere, for that the Rent is reſerved out of the profits of the land, and is not due till the Tenant or Leſſee take the profits; for reddendo inde, or ſolvendo, or reſervando inde, or the like, (b) is as much to ſay as, the Te-

(a) Fleta lib.3. cap.14. Britton cap.41. Mirror cap.2. Sect.16. Pl. Com.132. b.
* Lib.10.148. Cluns caſe.

(b) Pl. Com. 138,139, &c. in Brownings & Beſtons caſe. 35 H.6.34.

¶ Troys manners ỏ Rents y ſont; ceſtaſ-cavoir, Rent ſervice, Rent charge, & Rent ſetke. Rent ſervice eſt, lou le tenant tient ſa terre de ſon Seignior pur fealty, & certain Rent, ou per homage, fealty, & certain Rent, ou p auks ſervices, & certaine Rent; & ſi rent ſervice

THree manner of Rents there be; that is to ſay, Rent ſervice, Rent charge, & Rent ſecke. Rent ſervice is, where the Tenant holdeth his Land of his Lord by fealty, and certain Rent, or by homage, fealty, and certain Rent, or by other ſervices and certain rent; and if Rent ſervice at

ſoit

ſoit a aſcun jour (que doit eſtre pay) adereſt, le Seignior poit diſtrainer pur ceo de common droit.

any day that it ought to be payed be-hind, the Lord may diſtrain for that of com-mon right.

nant or Leſſe ſhall pay ſo much out of the profits of the lands; for Reddere nihil aliud eſt quam acceptum aut aliquam partem ejuſdem reſtituere. Seu reddere eſt quaſi retro dare, and hereof cometh Redditus for a Rent.

Here note, for the better underſtanding of ancient Records, Statutes, Charters, &c. Gabel, or Gavel, Gablum, Gabellum, Gabellettum, Galbellettum, and Gavillettum, do ſignify a Rent, Cuſtome, Duty, or Service, yielded or done to the King or any other Lord. As Wallingford continet 276. Hagas, i. domos reddentes 9. libras de gablo, i. de redditu: And Oxford, hæc urbs reddebat pro theolonio & Gablo regi 20. l'. & Sextarios mellis, comiti Alpharo 10 libras. And this is the legall ſignification thereof. Domeſday. Statutum de Gavilletto anno 10 E.2.

¶ *Rent ſervice.* It is called a Rent ſervice, becauſe it hath ſome corporall ſervice incident unto it, which at the leaſt is fealty, as here it appeareth.

¶ *Sa terre.* (c) A Rent ſervice cannot be reſerved out of any inheritance but ſuch as is manurable, whereunto the Lord may enter and take a diſtreſs, as out of Lands and Tenements, Reverſions, Remainders, and, as ſome have ſaid, out of the herbage of lands, and regularly not out of any inheritances incorporeal, or that ly in grant. (d) By act of Law one rent or ſervice may iſſue out of another: as if A. before the ſtatute of Quia emptores terrarum, had given lands to B. to hold to him by fealty, and ten ſhillings rent, and B. had made a feoffment in fee to C. &c. whereby there was a Meſnalty created; in this caſe C. ſhould hold of B. either by the ſame ſervices the Law created, or ſuch as he ſpecially reſerved, and B. did by operation of law hold thoſe ſervices of A. by fealty and ten ſhillings rent, that is to ſay, rent and ſervice out of rent and ſervice: and if the rent be behind, the Lord paramount may diſtrain upon the land for his rent, for both Meſnalty and Seignior do iſſue out of the land, the Meſnalty immediatly, and the Seignior mediately; which is worthy of due conſideration & obſervation. Vide Sect.218. (c) 44 E.3. 45. Lib.5. fol.4. Seignior Mountjoys caſe. 9 Aſſ.24. 30 Aſſ.5. 17 E.3.75. Lib.7. fol.23. Buts caſe. Pl. Com. 139. (d) 3 H.6.21. 5 H.7.36. 21 H.7.39. 1 H.4.82. 10 H.6.12. 19 E.2. tit. Gard.40. 21 H.6.11.

¶ *Certaine rent.* (e) For the rent muſt be certain, or which may be reduced to a certainty; for id certum eſt quod certum reddi poteſt. (f) Continetur carta reddendo inde annuatim ad tales terminos, vel faciendo inde talia ſervitia, vel tales conſuetudines, quæ omnia debent eſſe certa & in carta expreſſa, &c. But of this I have ſpoken Sect. 136. And the rent may as well be in delivery of Hens, Capons, Roles, Spurs, Bows, Shafts, Horſes, Hawks, Pepper, Cummine, Wheat, or other profit that lieth in render, Office, Attendance, and ſuch like, as in payment of money. (g) But a man upon his feoffment or conveyance cannot reſerve to him parcel of the Annual profits themſelves, as to reſerve the veſture or herbage of the land, or the like, for that ſhould be repugnant to the grant. Non debet enim eſſe reſervatio de proficuis ipſis, quia ea conceduntur, ſed de reddita novo extra proficua. (e) Britton fol.160. 2. (f) Fleta lib.3. cap.14. (g) 38 H.6.38. 2.

¶ *Poet diſtreine pur ceo.* For where there is fealty, &c. incident to the rent, there is a diſtreſs incident alſo thereunto. (h) But it is to be underſtood, that for a rent or ſervice the Lord cannot diſtrain in the night, but in the day-time, and ſo it is of a rent charge: but for damage feaſant one may diſtrain in the night, otherwiſe it may be the beaſts will be gone before he can take them. (h) Mirr. cap.2. Sect.16. 10 E.3. Avowry 137. 11 H.7.5.

¶ *De common droit.* Of common right, (i) that is, by the Common Law; ſo called, becauſe the Common Law is the beſt and moſt common birth-right that the ſubject hath for the ſafeguard and defence not onely of Goods, Lands, and Revenues, but of his wife and children, his body, fame, and life alſo. So as the meaning of Littleton in this particular caſe is, that the Lord may diſtrein for his rent of common Right, that is, by the common Law, without any particular reſervation or proviſion of the party. And it is to be obſerved, that the common Law of England ſometime is called Right, ſometime Common-right, and ſometime Communis Juſtitia. In the grand Charter the common Law is called Right, Rectum. Nulli vendemus, nulli negabimus aut differemus Juſtitiam vel Rectum. In the ſtatute of W. 1. c.1. it is called Common droit. En primes voet le Roy & commande que le peace de S. Egliſe & de la terre ſoit bien garde & maintaine en touts points, & que common droit ſoit faits a touts, auxibien aux pours come aux riches, ſauns regard de nulluy: which agreeth with the ancient Law in the time of King Edgar; Porro autem has populo quas ſervet proponimus leges: primum publici juris beneficio quiſquam fruit', idque ex æquo & bono, ſive is dives ſive inops fuerit, jus reddit'. And Fleta ſaith, Item quod pax Eccleſiæ & terræ inviolabiliter obſervet', & quod communis juſtitia ſingulis pariter exhibeatur. And all the Commiſſions and Charters for execution of Juſtice are, Facturi quod ad juſtitiam pertinet ſecundum legem & conſuetudinem Angliæ. So as in truth Juſtice is the daughter of the Law, for the Law bringeth her forth. And in this ſenſe being (i) W.1. cap.1. 2 H.4.c.1. 7 H.4. c.1. 4 H.8. cap.8. Lamb. fol. 78. Inter Leges Regis Edgar. Fleta lib.1. cap.29.

being largely taken, as well the ſtatutes and cuſtoms of the Realm, as that which is properly the Common Law, is included within Common droit. Littleton in this his Treatiſe nameth Common droit ſix times.

Vide Sect.214.216.226. 252. 331.

Sect. 214.

¶ *Sauns fait.* For it is a rule in Law, that a rent ſervice may be reſerved without deed.

35 H.6.34.

¶ *En meſme le manner, ſi leaſe ſoit fait, &c.* For theſe be rents Services, becauſe fealty is incident to theſe Rents, for (as it hath bin ſaid before) a leſſee for life or years ſhall do fealty. And if a man make a Leaſe at will, reſerving a Rent, the Leſſee ſhall not do fealty, and yet the Leſſor ſhall diſtrain for the rent of common right.

Vide Sect.131,132.

¶ *Rendant*, cometh of the word Reddo, i rem pro re dare, and ſignifieth yielding or repaying: but of this I have ſpoken before in this Chapter, Sect.213.

¶ ET ſi home voiloit doner terres ou tenements a un auter en taile, rendant a luy certain Rent p an, il de common droit poit diſtreiñ pur le rent adeuere, coment que tiel done fuit fait ſauns fait, pur ceo que tiel Rent eſt Rent ſervice. En iñ le manner eſt, ſi leas ſoit fait a un home pur terme de vie, ou dauter vie, rendant al leſſor certain Rent, ou pur terme de ans rendant certaine Rent.

AND if a man will give Lands or Tenements to another in the tail, yielding to him certain Rent by the year, he of common right may diſtrain for the Rent behind, though that ſuch gift was made without deed, becauſe that ſuch Rent is Rent Service. In the ſame manner it is, if a Leaſe be made to a man for life, or the life of another, rendring to the Leſſor certain Rent, or for term of years rendring Rent.

Sect. 215.

¶ *Reverſion.* Reverſio cometh of the Latine word Revertor, and ſignifieth a returning again: and therefore Reverſio terræ eſt tanquam terra revertens in poſſeſſione donatori ſive hæredibus ſuis poſt donum finitum, &c. as in the caſes that Littleton here hath put.

¶ *Il covient que le reverſion, &c. ſoit en le donor ou leſſor, &c.* This is not to be underſtood onely of a reverſion immediatly expectant upon the gift or Leaſe; for if a man maketh a gift in Tail, the Remainder in Tail, reſerving a Rent, and kyp the reverſion in himſelf, this is a Rent ſervice.

¶ *Reſervant.* Reſerver cometh of the Latine

¶ MES en tiel cas ou home ſur tiel done ou Leaſe voile reſerver a luy rent ſervice, il covient que le reverſion de les terres & tenements ſoit en le donor ou leſſor. Car ſi home voile faire feoffment en fee, ou voile doner terres en taile, le remainder ouſtre en fee ſimple, ſans fait, reſervant a luy certaine rent, tiel reſervant eſt void, pur ceo que nul reverſion remaine en le donor, & tiel renant

BUT in ſuch caſe where a man upon ſuch a gift or Leaſe will reſerve to him a Rent ſervice, it behoveth that the reverſion of the Lands and Tenements be in the Donor or Leſſor. For if a man will make a feoffment in fee, or will give Lands in tail, the remainder over in fee-ſimple, without deed, reſerving to him a certain Rent, this reſervation is void, for that no reverſion remains in the Donor, and ſuch

rient

tient la terre immediatm de le Seignior de que ſon donor tenoit, &c.

Tenant holds his land immediately of the Lord of whom his Donor held, &c.

the force of ſaving or excepting. a Rent; and (l) ſometime to except part of the thing in eſſe that is granted.

word Reſervo, that is, to provide for ſtore. As when a man departeth with his land, he reſerveth or provideth for himſelf a Rent for his own livelihood. And ſometime it hath

So as (k) ſometime it ſerveth to reſerve a new thing, viz.

(k) 8 E.4.48. 26 Aſſ. Pl. 66.
(l) 35 H.6.34.

And it is to be underſtood, that in the caſe of the gift in tail, leaſe for life, or years, the fealty is an incident inſeparable to the reverſion, ſo as the Donor or the Leſſor cannot grant the reverſion over, and ſave to himſelf the fealty, or ſuch like ſervice; but the Rent he may except, becauſe the Rent, although it be incident to the reverſion, yet it is not inſeparably incident. If a man maketh a gift in tail without any reſervation, the Donee ſhall hold of the Donor by the ſame ſervices that he held over. (m) But otherwiſe it is of an eſtate for life or years, for there if he reſerveth nothing, he ſhall have fealty only, which is an incident inſeparable to the reverſion, as hath ben ſaid.

(m) Litt. fol. 4. Old tenures 5. 38 E.3.7. 33 H.6.7.

¶ *Le remainder ouſter en fee ſimple ſans fait.* Here it appeareth, that if a man maketh a gift in tail, the remainder in fee, without deed, (n) the remainder is good, and paſſeth out of the Donor by the livery of ſeiſin: and ſo it is of a leaſe for life or years, the remainder over in fee for the particular eſtate, and the remainder to many intents and purpoſes, make but one eſtate in judgment of Law. Vid. Sect. 60.

(n) 40 E.3.10. 10 E.4.1. 12 E.4.16. 15 E.4.18. 18 E.4.12. 18 H.8.4. 3 H.7.13. F.N.B.219. 11 H.4.39. 38 E.3.36. 44 E.3.8.

¶ *Remainder.* In legal Latine it is Remanere, coming of the Latine word remaneo, for that (o) it is a remainder or remnant of an eſtate in Lands or Tenements expectant upon a particular eſtate, created together with the ſame at one time, as in the caſes here of Littleton appeareth.

(o) Lib.2. fol.51. Cholmley's Caſe.

Sect. 216.

¶ ET ceo eſt per force de leſtatute de Quia emptores terrarum: car devaunt le dit eſtatute, ſi home feſoit un feoffement en fee ſimple per fait ou ſans fait, rendant a luy & a ſes heires certeine rent, ceo fuit rent ſervice, & pur ceo il puiſſoit diſtreine de common droit. Et ſil fuit nul reſervation daſcun rent ne d aſcun ſervice, uncore le feoffee tenuſt del feoffor per autiel ſervice que le feoffor tenuſt ouſtre de ſon Seignior procheine paramount.

AND this is by force of the Statute of *Quia emptores terrarum:* for before the Statute, if a man had made a Feoffment in fee ſimple by Deed or without Deed, yielding to him and to his heirs a certain rent, this was a rent ſervice, and for this he might have diſtrained of common right. And if there were no reſervation of any Rent nor of any Service, yet the Feoffee held of the Feoffor by the ſame Service as the Feoffor did hold over of his Lord next paramount.

¶ Quia emptores terrarum.

Hereof is ſpoken before in the Chapter of Frankalmoigne, Sect. 140.

¶ *Per fait ou ſans fait, &c.* For all rent ſervices may be reſerved without deed, (as hath ben ſaid, and as appeareth here.)

And at the Common Law, if a man had made a feoffment in fee by parol, he might upon that feoffment have reſerved a Rent to him and his heirs, becauſe it was a rent ſervice, and a tenure thereby created.

¶ *Et ſil fuit nul reſervation, &c. le feoffee tenuſt del feoffor per autiels ſervices, &c.* This is evidence agreeth with our books, (*) that in this caſe the Law created the tenure: wherein it is to be obſerved, how the Law regardeth equity and equality, without any proviſion or reſervation of the party.

(*) Britton fol.100. 2 E.3.33. 25 E.3. gard.82. 49 E.3.10. 22 Aſſ.pl.53. 7 H.4.14. 23 E.3. avowry 255. 4 H.6. Litt. cap. Tail, Sect.

Ipſæ etenim Leges cupiunt ut jure regantur.

Sect.

Sect. 217.

¶ *PEr fait indent.* It cannot be by a Deed indented, unleſſe it be actually indented: for albeit the words of the Deed be, Hæc indentura, &c. yet if it be not indented indeed, it is no Indenture; but if the Deed be indented, albeit the words of the Deed be not, Hæc indentura, yet it is an Indenture.

Britton fol. 100. Fleta lib. 3. cap. 14. Vide Sect. 370.

And it is holden, that (p) if a feoffment in fee be made by deed poll reſerving a Rent, this reſervation is good; for when the Feoffee accepts the Deed and Livery of the land, he agreeth to the Rent, and the Rent is reſerved by the words of the Feoffor, and not by the grant of the Feoffee: but of this more hereafter. In the mean time it is to be noted, that of ancient time a Deed indented was called Charta chirographata, or Charta communis, becauſe each party had a part. And a Deed poll was called Charta de una parte. (q) Chartæ autem de pura donatione de ſimplici penes donatorium & ejus hæredes debent remanere, communes vero duplicari debent, ita quod quilibet habeat partem ſuam; vel ſi una ſit tantum, tunc in æqua manu communis amici utriuſque ponatur ſalvo cuſtodiend', dum cuilibet partium neceſſe fuerit exhibend'.

(p) 8 E. 4. 8. 11 H. 7. 22. 35 H. 6. 34. 20 E. 4. 13. 17 E. 3. 12 H. 4. 17.

(q) Fleta lib. 3. cap. 14. Britton fol. 100.

¶ *Reſervant a luy.* (r) Note, it is a maxim in Law, that the rent muſt be reſerved to him from whom the ſtate of the land moveth, and not to a ſtranger. (ſ) But ſome do hold, that otherwiſe it is in the caſe of the King.

(r) 12 E. 2. Feoffm. 8. 18 E. 2. Aſſ. 381.

(ſ) 35 H. 6. 36.

¶ *Et tiel rent eſt rent charge.* It is called a Rent charge, becauſe the Land for payment thereof is charged with a diſtreſs. If it be to the whole value of the land, or to the fourth part of the value, then the Rent is called a fee farm.

Old tenures. Britton cap. 66. 164. F.N.B. 310. Bract. 86.

¶ MEs ſi home per fait endent a cel jour fait tiel done en fee taile, l'remainder ouſter en fee, ou leaſe a terme de vie, le remainder ouſter en fee, ou un feoffment en fee, & per mi lendenture il reſerve a luy & a ſes heires un certeine rent, & que ſi le rent ſoit aderere, q̄ bien lirroit a luy & a ſes heires a diſtreiner, &c. tiel rent eſt rent charge, pur ceo que tielz terres ou tenements ſont charges ove tiel diſtreſſe per force de le ſcripture tantſolement, & nemy de common droit. Et ſi tiel home ſur fait endent reſerva a luy & a ſes heires certein rent, ſans aſcun tiel clauſe miſe en le fait, que il poit diſtreine, donque tiel rent eſt rent ſecke, pur ceo que il ne poit bener de aver le rent, ſi ceo ſoit deny, per meane de diſtreſſe: & ſi il ne fuit unques en ceſt cas ſeiſie de la rent, il eſt ſans remedie, come ſerra dit apres.

BUT if a man by Deed indented at this day maketh ſuch a gift in fee taile, the remainder over in fee, or a Leaſe for life, the remainder over in fee, or a feoffment in fee, and by the ſame Indenture he reſerveth to him and to his heirs a certain rent, and that if the rent be behind, that it ſhall be lawfull for him and his heirs to diſtrain, &c. ſuch a rent is a rent charge, becauſe ſuch Lands or Tenements are charged with ſuch diſtreſſe by force of the writing onely, and not of common right. And if ſuch a man upon a deed indented reſerve to him and to his heirs a certain rent, without any ſuch clauſe put in the deed, that he may diſtrain, then ſuch rent is rent ſeck, for that he cannot come to have the rent, if it be denied, by way of diſtreſſe. And if in this caſe he were never ſeiſed of the rent, he is without remedy, as ſhall be ſaid hereafter.

Here Littleton putteth his caſe, and ſo did he in the

the next Section before, of a clause of distress generally granted. (t) A man granted a rent out of certain land, pro consilio impenso & impendendo. To have and to hold to him and to his Assignes for term of his life, payable at four Feasts in the year, and for default of payment upon demand, it should be lawfull for him to distrein; the Grantee granted the Rent over; the Assignee after one of the days demanded the Rent, and distreined, and the distress was adjudged lawfull, for he needs not make a demand at any of the days, as in the case of reentry, but he may demand it when he will, for it is only to entitle him to his remedy for his meer duty.

(t) Lib. 7. fol. 28. b. Maunds Case. H. 43 El. in Com. Banco, Rot. 1108. inter Maund & Gregory. M. 40 & 41 El. in Com. Banco, inter Stanly & Read. 18 El. Dier 348.

¶ *Distreine, &c.* Here by (&c.) is implied what things are distreinable, which elsewhere is expressed at large. Also where the distress is to be taken in the same land, and in some other; which with many differences is set down in his proper place.

Vide sect. 221.

¶ *Il serra sans remedie.* Note that upon a reservation of a Rent upon a Feoffment in Fee by deed indented, (w) the Feoffor shall not have a writ of Annuity, because the words of Reservation, as reddendo, solvendo, faciendo, tenendo, reservando, &c. are the words of the Feoffor and not of the Feoffee, albeit the Feoffee by acceptance of the state is bound thereby.

(w) 33 E. 3. Annuity 52. 1 H. 4. 5. 26 Ass. Pl. 66. 21 E. 4.

And where Littleton putteth his case when a Reservation is made upon an estate that passeth by Livery, the same Law it is, if a man at this day do bargain and sell his Land by deed indented and inrolled according to the Statute, a Rent may be reserved thereupon: for albeit an Use had only passed by the Common Law, yet now by the statute of 27 H. 8. cap. 10. the use and possession pass together, and so it was adjudged. * And so it is of a grant of a reversion or remainder, and any other conveyance of Lands or Tenements, whereby any estate doth pass.

* Mich. 39 & 40 El. in Com. Banco, inter Wickes & Tillerd.

Sect. 218.

¶ Auxy si home seisie de certain terre graunt per un fait polle, ou per indenture, un annual rent issuant hors de meisme la terre a un auter en fee, ou en fee taile, ou pur terme de vie, &c. obesq; clause de distresse, &c. donques ceo est rent charge: & si le grant soit sans clause de distresse, donques il est Rent seck. Et nota, que Rent seck idem est quod redditus siccus; pur ceo que nul distresse est incident a ceo.

Also if a man seised of certain Land grant by a Deed poll, or by Indenture, a yearly Rent to be issuing out of the same Land to another in fee, or in fee taile, or for term of life, &c. with a clause of distress, &c. then this is a Rent charge: and if the Grant be without clause of distress, then it is a Rent secke. And note, that Rent secke *idem est quod redditus siccus*; for that no distress is incident unto it.

¶ *Seisie de Terre.* (x) Note, that a Rent cannot be granted out of a Piscary, a Common, an Advowson, or such like incorporeal inheritances; but out of Lands or Tenements, whereunto the Grantee may have recourse to distrein, or which may be put in view to the recognitors of an Assise, as hath been said before in this Chapter. And though it be out of lands or Tenements, (z) yet it must be out of an estate that passeth by the conveyance, (as by all Littletons examples appeareth) and not out of a right: As if the Disseisee release to the Disseisor of land, reserving a rent, the reservation is void. Et sic de similibus.

(x) 32 E. 3. tit. Scir. fac. 100. 40 E. 3. Pl. Com. 139.

Vide sect. 213.

(z) 10 R. 2. 3. b. 33 H. 6. 5. 30 E. 3. 28 E. 4. 8. 5 E. 3. Fines 1. 9 E. 3. 7. 46 E. 3. 27. 21 H. 6. 8. Temps E. 1. Ass. 42.

¶ *Grant per fait.* * Also a man may have a rent by prescription.

* 19 E. 3. Title 34.

¶ *Rent secke* idem est quod redditus siccus. This needs no explanation, for Littleton expounds it himself.

Sect. 219.

¶ *RENT Charge.* Here it appeareth by Littleton, that this prima facie is a Rent charge, whereof in this Chapter shall be spoken more at large.

And so it is of a Rent Seck.

¶ *Home grant.* Put case that A. be seised of lands in Fee, and he and B. grant a Rent charge to one in Fee, this prima facie is the grant of A. and the confirmation of B. but yet the Grantee may have a writ of annuity against both.

(a) 16 E. 2. tit. Annuity 47. Vide sect. 384.

Two men (a) grant an annuity of twenty pounds per annum to another, although the persons be several, yet he shall have but one Annuity: but if the grant be, Obligamus nos, & utrumque nostrum, the Grantee may have a Writ of annuity against either of them, but he shall have but one satisfaction.

¶ *Briefe de annuitie* is a Writ for the Recovery of an annuity. (b) An annuity is a yearly payment of a certain summe of money, granted to another in fee, for life, or years, charging the person of the Grantor only. (c) But not only the Grantee, but his heir and his and their Grantee also shall have a writ of Annuity. (d) But if a Rent charge be granted to a man and his heirs, he shall not have a Writ of annuity against the heir of the Grantor, albeit he hath Assets, unless the grant be for him and his heirs.

(b) Doct. & Stud. cap. 3. 17 El. Dier 344. b. 45 E. 3. Executor 72.

(c) 3 E. 6. Dier 65. And Serjeant Bendloes reporteth, that so was the opinion of the Court.

(d) 2 H. 4. 13. Dier 17 Eliz. 344. b.

¶ Item, si home granta per son fait un rent charge a un auter, & le rent est arere, le grantee poet eslier sil voet suer un briefe de Annuity de ceo envers l'grantor, ou distreiner pur le rent arere, & l'distresse retaine tanq; il soit de ceo pay: mes il ne poit faire ne aver ambideux ensemble, &c. Car sil recover per briefe Dannuity, donques la terre est discharge de le distresse, &c. Et sil ne suist Briefe de Annuitie, mes distraine pur les arrerages, & le Tenant suist son Replegiare, & donques le grantee avowa le prisel de le distresse en la Terre en Court de record, donques est la terre charge, & la person del grantor discharge d Action d annuity.

Also, if a man grant by his Deed a Rent charge to another, and the Rent is behind, the Grantee may chuse whether he will sue a writ of Annuity for this against the Grantor, or distrein for the Rent behind, and the distresse detain until he be paid: but he cannot do or have both together, &c. For if he recovers by a Writ of Annuity, then the Land is discharged of the distress, &c. And if he doth not sue a Writ of Annuity, but distrein for the arrerages, and the Tenant sueth his Replevin, and then the Grantee avow the taking of the distress in the Land in a Court of Record, then is the land charged, and the person of the Grantor discharged of the Action of Annuity.

¶ *Poet eslier.* The Grantee hath election to bring a Writ of Annuity, and charging the person only, to make it personal, or to distrain upon the Land, and to make it real.

But if a man grant a Rent charge to a man and his heirs, and dieth, and his wife bring a Writ of Dower against the heir, the heir, in barre of her Dower, claims the same to be an Annuity, and no Rent charge, yet the wife shall recover her Dower, for he cannot determine his election by claim, but by suing of a Writ of annuity, (as Littleton saith;) neither can the heir have after the endowment an annuity for the two parts, for that should not be according to the deed of Grant, for either the whole must be a Rent charge, or the whole an Annuity. But Littleton is to be understood with some limitation: (e) for of a Rent granted for owelty of partition a writ of annuity doth not lye, because it is of the nature of the land descended

(e) 29 Ass. p. 23.

ſcended. Alſo of ſuch a Rent as may be granted without deed a Writ of annuity doth not lye, though it be granted by Deed.

(f) And here is to be noted, That here is no election given of two ſeveral things: as if the grant were of an annuity, or a Robe yearly, &c. for there the Grantor had election at the day to deliver which he would. But here is two remedies given for one yearly ſumme, and conſequently the Grantee ſhall at any time have election to take which of the remedies he will, for in all caſes where ſeveral remedies be given, the party to whom the Law giveth the remedies, it giveth him withall election to take which of the remedies he will.

(f) Sir Rowland Heywards caſe, Lib. 2. fol. 36. 28 E.3.98. 41 E.3. 10. 2. 2 H.4. 12. 6 H.4. 10. 36.H.6.10. 9 E.4. 46. 21 E.4.55. b. 1 E.3. 2. F.N.B. 121.

¶ *Mes il ne poet faire ou aver ambideux enſemble.* For then he ſhall recover one thing twice, which ſhould be double charge to the Grantor.

Lib. 2. fol.36, 37. in Sir Rowland Heywards caſe.

Note, as to elections theſe diverſities following:

Firſt, When nothing paſſeth to the feoffee or grantee before election to have the one thing or the other, there the election ought to be made in the life of the parties, and the heir or executor cannot make election. But when an eſtate or intereſt paſſes immediately to the Feoffee, Donee, or Grantee there election may be made by them, or by their Heirs or Executors.

Secondly, when one and the ſame thing paſſeth to the Donee or Grantee, and the Donee or Grantee hath election in what manner or degree he will take this, there the intereſt paſſeth immediately, and the party, his heirs, or executors, may make election when they will.

Thirdly, when election is given to ſeveral perſons, there the firſt election made by any of the perſons ſhall ſtand.

Fourthly, In caſe an election be given of two ſeveral things, always he which is the firſt agent, and which ought to do the firſt act, ſhall have the election. As if a man granteth a rent of 20. ſhillings, or a robe to one and to his heirs, the Grantor ſhall have the election; for he is the firſt agent by payment of the one, or delivery of the other. So if a man maketh a leaſe, rendering a Rent or a Robe, the leſſee ſhall have the election *cauſa qua ſupra*, and with this agree the books in the * margent. (g) But if I give unto you one of my horſes in my ſtable, there you ſhal have the election, for you ſhall be the firſt agent by taking or leiſure of one of them. And if one grant to another 20. loads of Hazill, or 20. loads of Maple to be taken in his Wood of D. there the Grantee ſhall have election, for he ought to do the firſt act, i. to fell and take the ſame.

* 9 E.4. 36. b. 13 E.4. 4. b. 15 E.4.6.b. 11 E.3. annuity 27. 11 Aſſ. p.8. 29 Aſſ. 55. 3 E.3. tit. Aſſ. 175. 43 E.3. tit. Barre 194.

(g) 2 H.7. 23. a.

Fifthly, When the thing granted is of things annual, and are to have continuance, there the election remaineth to the Grantor, in caſe where the Law giveth to him election) as well after the day, as before, otherwiſe it is when the things are to be performed *unica vice*: And therefore if I grant to another for life, an Annuity or a Robe at the feaſt of Eaſter, and both are behind, the Grantee ought to bring his writ of Annuity in the diſjunctive, for if he bring his writ of Annuity for the one onely, and recover, this judgment ſhall determine his election for ever, for he ſhall never have a writ of Annuity afterwards, but a Scire facias upon the ſaid judgment. Which reaſon Fitzherbert in his Natura Brevium not obſerving, held an opinion to the contrary. But if I contract with you to pay unto you 20. ſhillings, or a robe at the feaſt of Eaſter, after the feaſt you may bring an Action of debt for the one or for the other.

9 E.4.36. 13 E. 4. & the other aboveſaid Books.

Sixthly, The Feoffee by his act and wrong may loſe his election, and give the ſame to the Feoffor: As if one infeoff another of two acres, to have and to hold the one for life, and the other in tail, and he before election maketh a feoffment of both, in this caſe the Feoffor ſhall enter into which of them he will, for the act and wrong of the feoffee.

¶ *Sil recover en Briefe de Annuitie donques eſt la terre diſcharge de diſtreſs.* Here is to be obſerved, that this determination of the election of the Grantee muſt be by action or ſuit in Court of Record, (h) for albeit the Grantee diſtrain for the Rent, yet he may bring a Writ of Annuity and diſcharge the land. And Littleton putteth his caſe here ſurely upon a Recovery in a Writ of Annuity. (i) But if the Grantee doth bring a Writ of Annuity, and at the return thereof appear and count, this is a determination of his election in Court of Record, albeit he never proceedeth any farther. (k) As if a wife be endowed *ex aſſenſu patris*, and the husband dieth, the wife hath election either to have her Dower at the Common Law, or *ex aſſenſu patris*: if ſhe bring a Writ of Dower at the Common Law, and count, albeit ſhe recover not, yet ſhall ſhe never after claim her Dower *ex aſſenſu patris*.

(h) 17 El. Dict. 344. b.

(i) F.N.B. 152. b. 5 H.7.33.b.

(k) 12 E.2. Dower 158.

(l) So if the Grantee bring an aſſiſe for the Rent, and make his plaint, he ſhall never after bring a Writ of Annuity. But the purchaſing of a Writ of Annuity, and entry of it in Court of Record, or an aſſiſe, is no determination of the election, becauſe an eſtranger may purchaſe a Writ in the name of the Grantee, and enter it of record, but if the Grantee appear thereunto, &c. then this doth amount to a determination of his election as hath been ſaid.

(l) 10 E. 4. 17.

¶ *Son Replegiare.* Littleton ſpake immediately before of an brief dannuity, but here he ſaith, Son Replegiare, becauſe goods may be replevied two manner of ways, viz. by Writ, and that is by the Common Law, or by the plaint, and that is by the Statutes, for the more ſpeedy having again of their cattell and goods. A Replegiare lieth, as Littleton here teacheth us, where goods are diſtreined and impounded, the owner of the goods may have a writ De replegiari facias, whereby the Sheriff is commanded, taking ſureties in that behalf, to redeliver the goods diſtreined to the owner; or upon complaint made to the Sheriff, he ought to make a Replevy in the County. Replegiare is compounded of Re and plegiare, as much as to ſay, to redeliver upon pledges or ſureties; and in the Statute of Marlebridge, Deliberare is uſed for Replegiare. (m) And the Sheriff ought to take two kind of pledges, one by the Common Law, and they be Plegii de proſequendo, and another by the ſtatute, viz. Plegii de retorno habendo. Vide Sect. 58. what things may lawfully be diſtreined, whereupon a Replegiare may be ſued. The forms of the writ you ſhall read in the Regiſter and F.N.B. *

Glanvil lib. 12. cap. 12.
Marlbr. cap. 21.
W.1.cap.16,17. W.2.cap.39.
Fleta lib.2. cap. 40.

Marlbr. cap.21. 21 H.6. Return de Vic. 17.
(m) W.2. cap. 2.
Fleta lib.4.cap.5. 4 H.6. 15.
* Regiſt. F.N.B. 68.

(n) It is a general rule, that the Plaintiff muſt have the property of the goods in him at the time of the taking. (o) But yet if the goods of a villein be diſtreined, the Lord of the villein ſhall have a Replevy, becauſe the bringing of the Replevy amounts to a claim in Law, and veſts the property in the Plaintiff. But in that caſe, if the goods of the villein be taken by a treſpaſſe, the Lord ſhall have no Replevy, becauſe the villein had but a right.

(n) 3 E.3. 74. 6 H.4.2.& 39. 9 H.6. 39. 20 H.6.19.
(o) 33 E.3. Replev. 43. 42 E.3. 18. 9 H.6. 25. F.N.B. 69. F. 6 H.7. 9. 19 E.3. Replev. 32.

(p) But there be two kind of properties: a general property, which every abſolute owner hath; and a ſpecial property, as goods pledged or taken to manure his lands, or the like: and of both theſe a Replegiare doth lie.

(p) 42 E.3.18. 11 H.4.17.23. 47 E.3.12. 48 E.3.20. 7 H.4.17.

And albeit it be provided by the Statute of Marlebridge, cap. 22. quod vicecomes poſt querimoniam inde ſibi factam, ea ſine impedimento vel contradictione ejus qui dicta averia ceperit deliberare poſſit, &c. (q) yet where the Defendant claims property, the Sheriff cannot proceed: for it is a rule in Law, that property ought to be tried by writ. And therefore in that caſe where the trial is by plaint, the Plaintiff may have a writ De proprietate probanda directed to the Sheriff to try the property; and if thereupon it be found for the Plaintiff, then the Sheriff to make deliverance; (for ſo be the words of the Writ) and if for the Defendant, he can no farther proceed, but that is but an enqueſt of office: and therefore if thereby it be found againſt the Plaintiff, yet he may have a writ of replevy to the Sheriff; and if he return the claim of property, &c. yet ſhall it proceed in the Court of Common Pleas, where the property ſhall be put in iſſue and finally tried. And the Sheriff may take a plaint upon the ſaid act out of the County, and make replevin preſently, for it ſhould be inconvenient for the owner to forbear his cattel till the County day.

Marlbr. cap. 22.

(q) 30 E.3.22. 31 E.3. Replev. 35. &4. 7 H.4.26.28. 31 H.6. Prop. prob.5. 1 E.4.9. 21 E.4.64. 2 Eliz. Dier 173. 21 E.4.66.

(r) It is to be noted, that a man cannot claim property by his Bayliff or ſervant: and the reaſon is, for that if the claim fall out to be falſe, he ſhall be fined for his contempt, which the Lord cannot be, unleſſe he maketh claim himſelf; for Nemo punitur pro alieno Delicto.

(r) 5 E. 3. 38. 11.H.4.4. 17 E.2. Prop. prob. 6.

In a ſpecial caſe a man may have a Replevin of goods not diſtreined; as if the Meſne put in his cattell in lieu of the cattell of the Tenant parabail, that he is bound to acquite, he ſhall have a replevin of thoſe cattell that never were diſtreined.

34 H.6. 47.

If a man by his Deed grant a Rent with clauſe of diſtreſſe, and grant farther, that he ſhall keep the goods diſtreined againſt gages and pledges, untill the rent be paid; yet ſhall the Sheriff replevy the goods diſtreined: for it is againſt the nature of ſuch a diſtreſſe to be irreplevisable, and by ſuch an intention the current of replevins ſhould be overthrown, to the hindrance of the Commonwealth; and therefore it was diſallowed by the whole Court, and awarded that the Defendant ſhould gage deliverance, or elſe go to priſon. And Bracton is of the ſame opinion, for he ſaith, Eodem modo de via obſtructa, per breve quod juſticiet propter communem utilitatem, ne tranſeuntes ire diu impediantur, quia hoc eſſet commune damnum; & in hoc vicecomes & juſticiarii faciant ſicut ſuper detentionem averiorum contra vadium plegii, propter communem utilitatem, ne animalia diu incluſa pereant: which in mine opinion is an excellent point of learning.

31 E.3.Gage deliver. 5.

Bracton lib. 4. fol. 233.a.& b.

If the beaſts of divers ſeveral men be taken, they cannot joyn in a Repleg. but every one muſt have a ſeveral replevin: And ſo in a Replevin it is a good plea to ſay, that the property is to the Plaintiff and to a ſtranger; and where there be two Plaintiffs, that the property is to one of them.

28 E.3.92. 3 H.4.12. 34 H.6. 37. 2 E.4. 23.

There is alſo a writ De homine replegiando. But Littleton is ready to give you farther inſtruction, therefore hear him.

Regiſt. fol. 133. Bract. fol.121.& 154. W.1.cap.11. Fleta lib.2. ca.2. F.N.B. 66. b.

¶ *Et avow a le priſe, &c. en court de record.* Here it appeareth, that an avowry in Court of Record, which is in nature of an action, is a determination of his election before any judgment given. And this is a good proof of that which hath been formerly ſaid of the writs of Annuity and Aſſiſe.

Electio

Electio ſemel facta & placitum teſtatum non patitur regreſſum.
Quod ſemel placuit, in electionibus amplius diſplicere non poteſt.

21 H. 6. 24. per Newton
27 H. 6. 4.

If a Rent charge be granted to A. and B. and their heirs, A. diſtreineth the beaſts of the Grantor, and he ſueth a Replevin, A. avoweth for himſelf, and maketh conuſance for B: A. dieth, and B. ſurviveth, B. ſhall not have a Writ of Annuity, for in that caſe the election and avowry for the Rent of A. barreth B. of any election to make it an Annuity, albeit he aſſented not to the avowry.

But here is another diverſity to be obſerved betwixt the caſe aforeſaid of the grant of the Rent, where he (as hath been ſaid) may make it either real or perſonal, and when a man may have election to have ſeveral remedies for a thing that is meerly perſonal or meerly real from the beginning. As if a man may have an action of account or an action of debt at his pleaſure, and he bringeth an action of account and appear to it, and after is Nonſuit, yet may he have an action of debt afterwards, becauſe both actions charge the perſon. The like Law is of an Aſſiſe and of a Writ of entry in the nature of an Aſſiſe, and the like.

28 E. 3. 98. b.
27 E. 3. 89. b.

Sect. 220.

¶ ITem, ſi home voile que un auter averoit un Rent charge iſſuant hors de ſa terre, mes il ne voile q̄ ſa perſon ſoit charge en aſcun manner p̄ briefe dannuitie, donques il poit aver tiel clauſe en la fine de ſon fait. Proviſo ſemper, Quod præſens ſcriptum, nec aliquid in eo ſpecificatum, non aliqualiter ſe extendat ad onerandum perſonam meam, per breve, vel actionem de annuitate, ſed tantummodo ad onerandum terras, & tenementa mea de annuali redditu prædict, &c. Donques la terre eſt charge, & le perſon del grantor diſcharge.

ALſo if a man would that another ſhould have a Rent charge iſſuing out of his Land, but would not that his perſon be charged in any manner by a Writ of Annuity, then he may limit ſuch a clauſe in the end of his deed: Provided always, that this preſent Writing nor any thing therein ſpecified, ſhall any way extend to charge my perſon by a Writ or an action of Annuity, but onely to charge my Lands and Tenements with the yearly Rent aforeſaid, &c. Then the Lord is charged, and the perſon of the Grantor diſcharged.

¶ By this Section it appeareth, that when in a generall grant, the Law doth give two remedies, that the Grantor may provide that the Grantee ſhall not uſe one of them, and leave the party to the other. But where the Grantee hath but one remedy, there that remedy cannot be barred by any proviſo, for ſuch a proviſo ſhould be repugnant to the Grant.

28 H. 8. Dier 9. b.

¶ *De annuali reddit, &c.* Hereby (&c.) and the conſequent of this Section, be implyed divers excellent points of learning, viz. If a man by his Deed granteth a Rent charge out of the Mannor of Dale, (wherein the Grantor hath nothing) with ſuch a proviſo, that it ſhall not charge his perſon, albeit the repugnancie doth not appear in the Deed, yet the proviſo taketh away the whole effect of the Grant, and therefore is in judgment of Law repugnant: for upon the matter it is but a grant of an Annuity, provided, that it ſhall not charge his perſon, for which cauſe our Author putteth his caſe of a Rent charge iſſuing truly out of Land. But if a man by his Deed grant a Rent charge out of Land, provided that it ſhall not charge the Land, albeit the Grantee hath a double remedy. (as hath been ſaid) yet the Proviſo is repugnant becauſe the Land is expreſſly charged with the Rent, but the Writ of Annuity is but implied in the Grant, and therefore that may be reſtrained without any repugnancy, and ſufficient Remedy left for the Grantee, for which cauſe our Author putteth his caſe of reſtraint of bringing a Writ of Annuity. And yet in ſome caſe where there is a Proviſo

So it was reſolved by the Juſtices in 11 H. 8. 22 Juſtice Spilman reporteth, 9 H. 6. 53.

in the deed, that the Grantee ſhall not in any ſort charge the perſon of the Grantor generally, notwithſtanding the perſon of the Grantor ſhall be charged: As if a man grant a rent charge out of certain lands to another for life with ſuch a Proviſo, the Rent is behind, the Grantee dieth, the Executors of the Grantee ſhall have an action of Debt againſt the Grantor, and charge his perſon for the arrerages in the life of the Grantee, becauſe the Executors have no other remedy againſt the Grantor for the arrerages, for diſtrein they cannot, becauſe the eſtate in the Rent is determined, and the Proviſo cannot leave the Executors without remedy, as appeareth by that which hath been ſaid. And therefore our Author putteth his caſe of a Rent charge continuing. And here it is to be obſerved, that this word (Proviſo) hath divers operations: ſometime it worketh a qualification or limitation, and ſo it is taken here, and often in our Books; ſometime a Condition, and ſometime a Covenant, whereof you ſhall read more hereafter, Sect. 320.

6 Eliz. Dier 227.

32 Aſſ. p. 1. Vide ſect. 384.

¶ *En le fine de ſon fait.* Here Littleton putteth his caſe of one Deed: but though the grant be general and want ſuch a Proviſo, yet may the Grantee by another Deed by way of defeaſance grant that he ſhall not charge the perſon of the Grantor, and that if he bring a writ of Annuity, that the Rent ſhall ceaſe.

¶ *Nec aliquid in eo ſpecificatum non aliqualiter ſe extendat, &c.* Here is to be obſerved a double negative, Nec and Non, which in Grammatical conſtruction amounteth to an affirmative, for Negatio deſtruit negationem, & ambo faciunt affirmativum: yet the Law, that principally reſpecteth ſubſtance, doth judge the Proviſo to be a negative, according to the intent of the parties, and not according to Grammatical conſtruction, to the end the Proviſo may take effect: and the like you ſhall find hereafter in Littleton. * Mala Grammatica non vitiat cartam. Here our Author putteth his caſe of one Grantor: put then the caſe that A. and B. being joyntenants of lands in fee, by their Deed grant a Rent charge out of thoſe lands, provided that the Grantee ſhall not charge the perſon of A. In this caſe, if the Grantee bringeth a Writ of Annuity, he muſt charge the perſon of B. only.

(*) Lib. 3. cap. de condic. fol. 62.

Sect. 221.

¶ QVE ſi A. *de* B. Here want words to precede theſe, viz. que il grant al A. de B. &c. que ſi A. de B. &c. as it appeareth in the original; and ſo it appeareth in the cloſe of this Section, viz. Mes granta tantſolement que il poit diſtreiner. And without ſuch a clauſe the grant ſhould be imperfect.

¶ *Pur ceo que le mannor eſt charge ove le rent per voy de diſtreſſe.* And yet no Rent is expreſly granted out of the Mannor. But by the Grant that he ſhall diſtrein for ſuch a yearly ſum of money, in judgment of Law the Mannor is charged with the Rent, but the perſon of the Grantor cannot be charged, becauſe he expreſly granteth no Rent, for that would charge his perſon, but that the Grantee ſhould diſtrein, &c. which only chargeth the Land.

¶ ITem, ſi home fait tiel fait en tiel manner, que ſi A. de B. ne ſoit annuelment pay al feaſt de Noel pur terme de ſa vie xx ſ. de loyal mony, que adonques bien lirroit a ceſtuy A. de B. a diſtreiner pur ceo en le mannor de F. &c. ceo eſt bone rent charge, pur ceo q̄ l' mannor eſt charge ove le rent per voy de diſtreſſe; & uncore la perſon de celuy que fait tiel fait eſt diſcharge en tiel caſe de action dannuitie, pur ceo que il ne granta per ſon fait aſcun

ALſo, if one make a Deed in this manner, That if *A.* of *B.* be not yearly payed at the Feaſt of Chriſtmaſſe for term of his life xx. s. of lawfull money, that then it ſhall be lawfull for the ſaid *A.* of *B.* to diſtrein for this in the Mannor of *F.* &c. this is a good Rent charge, becauſe the Mannor is charged with the rent by way of diſtreſſe; and yet the perſon of him which makes ſuch Deed is diſcharged in this caſe of an action of Annuity, becauſe he doth

Annuitie

Annuitie a le dit A. ꝺ B. mes grant tantſolement, que il poit diſtrainer ꝑ tiel Annuitie, &c.

not grant by his Deed any Annuity to the ſaid *A.* of *B.* but granteth only that he may deſtrain for ſuch Annuity, &c.

¶ *Que il poit diſtrein pur tiel Annuity, &c.*

Hereby (&c.) many points worthy of obſervation are implied, viz. if a man ſeiſed of Lands in Fæ bindeth his goods and Lands to the payment of a yearly Rent to A. &c. B. this is a good Rent charge with power to diſtrain, albeit there be no expreſs words of charge, nor to diſtrain. Or in theſe words, Obligo Manerium meum de C. & omnia bona in dicto Manerio exiſtent' A. de B. in annuo reditu de xx. s. ad diſtringend' per Ballivum Domini Regis pro redditu prædicto. By this grant a rent charge iſſueth out of the Mannor, and where the words be, ad diſtringendum per Ballivum Domini Regis, this is for the advantage of the Grantee. And therefore the Kings Baily ſhould be but his Miniſter to diſtrain for his Rent, and that which he may do by his ſervant, he may do by himſelf, or by any other of his ſervants.

10 Aſſ.p.1. 18 E.3.32. 3 Aſſ.7. 3 E.3.12. 10 Aſſ.24. 31 Aſſ.p.17. 33 Aſſ. Annuity 52. 16 E.3. grant.64.

If a man by Deed grant a Rent of forty ſhillings to another out of his Mannor of Dale, to have and to perceive to him and to his heirs, and grant over by the ſame Deed, that if the Rent be behind, that the Grantee ſhall diſtrain in the Mannor of Sale (be the Mannor of Sale in the ſame County or in another County, and be this grant by one Deed or divers Deeds) the Rent is onely iſſuing out of the Mannor of D. and it is but a pain, that he ſhall diſtrain in the Mannor of S. but both the Mannors are charged, the one with the Rent, and the other with a diſtreſs for the Rent, the one iſſuing out of the land, and the other to be taken upon the land. And whereas our Author puts his caſe of a grant for life: So it is, if I grant to you, that you and your heirs, or the heirs of your body ſhall diſtrain for a Rent of forty ſhillings within my Mannor of S. this by conſtruction in Law ſhall amount to a grant of a Rent out of my Mannor of S. in Fæ ſimple or Fee tail; for if this ſhall not amount to a grant of a Rent, the grant ſhall be of little force or effect, if the Grantee ſhall have but a bare diſtreſs and no Rent in him. For then he ſhall never have an Aſſiſe of this, &c. And this is the reaſon that it is ſo often ruled and reſolved (*) that this amount to a grant of a Rent per conſtruction of law. Ut res magis valeat, and all this is neceſſarily implied in the (&c.) and in this caſe the Grantee ſhall not have a Writ of Annuity, as our Author ſaith: And whereas our Author putteth his caſe where the diſtreſs is to be taken in the ſame land out of which the Rent by conſtruction of Law is iſſuing, hereby is implied that if a Rent be granted out of the Mannor of D. and the Grantor grant over, that if the Rent be behind, the Grantee ſhall diſtrain for the ſame Rent in the Mannor of S. this is but a penalty in the Mannor of S. for theſe cauſes.

Lib.7. fol.23,24. in Buts his caſe.

(*) 3 E.3.12. 3 Aſſ.p.7. 14 Aſſ.p.14. 16 E.3. tit. Grants 64. 18 E.3.32. 26 Aſſ.38. 30 Aſſ.12. 46 E.3.18.32. 8 H.4.19. 9 H.6.9. 22 H.6.11.

First, The Law needs not to make conſtruction that this ſhall amount to a grant of a Rent, for here is a Rent expreſſly granted to be iſſuing out of the Mannor of D. and the parties have expreſſly limited out of what land the Rent ſhall iſſue, and upon what land the diſtreſs ſhall be taken, and the Law will not make an expoſition againſt the expreſs words and intention of the parties, which this way ſtands with the rule of the Law. Quoties in verbis nulla eſt ambiguitas, ibi nulla expoſitio contra verba expreſſa fienda eſt.

Secondly, If in this caſe this ſhall amount to a grant of a Rent out of the Mannor of S. then the Grantor ſhall be twice charged. For if the Grantee bringeth a Writ of Annuity, this ſhall extend onely to the Mannor of D. For upon the grant of a diſtreſs in the Mannor of S. no Writ of Annuity lieth, becauſe the Mannor of S. is onely charged, and not the perſon of the Grantor as to this; and for this cauſe the bringing of the Writ of Annuity cannot diſcharge the Mannor of S. of any Rent: and ſo the Law by conſtruction againſt the words and the intention of the parties ſhall do injury to the Grantor to charge him twice.

Thirdly, If in ſuch caſe the Mannor of S. in which the diſtreſs is onely limited, ſhall be in another County; then it hath been often adjudged, that the Rent ſhall not iſſue out of the ſame, but the diſtreſs ſhall be as a mean and remedy to compell the Tenant of the Land to pay the Rent. And it was ſaid that there was no diverſity in reaſon, that the Law in conſtruction ſhall make the Rent to be iſſuing out of this, when it lieth in the ſame County, and not when it lieth in ſeveral Counties, for the words in both caſes are all one, and there is no reaſon to ſay that he ſhall fail of a recovery by Aſſiſe. And the Books in 1 Aſſ. p. 10. and 1 E. 3. 21. and other Books do not ſay that the Rent iſſueth in this caſe out of both, but that the land in which the diſtreſs ſhall be taken is charged: and this is true, for it is charged with the diſtreſs. And inſomuch as it was charged with the diſtreſs, their opinion was that the Tenant of both of them ſhall be named in the Aſſiſe. And the opinion of Finchden, in 41 E. 3. 13. was affirmed to be good Law, That if the Mannor of D. out of which the Rent is granted be recovered by an elder Title, that all the Rent is extinct, but if the Mannor of S. in which the diſtreſs is limited, be evicted, yet all the Rent remains. * So if the Grantee purchaſe parcel of the Mannor of S. the Rent is not extinct, for that the Rent iſſueth only out of the Man-

Vide Bulwar's caſe, Lib.7. fol.3. 1 Aſſ.p.10. 1 E.3.21. Vide 9 E.3.13. 31 Aſſ.27. 17 E.4.6. 10 Aſſ.4. 10 E.3.18. 2.E.2. Aſſ.360. 1 Aſſ.10. 3 Aſſ.7. 32 H.6.27. 22 Aſſ.66. 31 Aſſ.27. 29 E.3. Aſſiſe 366. 41 E.3.13. per Finchden. * Vide 17 E.4.6. Semblable caſe. Vide Sect. proſequent.

nor of D. And it is ſaid that if a man grant a Rent out of three acres, and grant over, that if the Rent be behind, that he ſhall diſtrein for the rent in one of the acres. This rent is entire, and cannot be a Rent ſeck out of two Acres, and a Rent charge out of the third Acre, and therefore it is a Rent ſeck for the whole; and yet he ſhall diſtrein for this in the third Acre. So if a Rent be granted to two and to their heirs, out of an Acre of Land, and that it ſhall be lawfull for one of them and his heirs to diſtrein for this in the ſame Acre, this is a Rent ſeck; for inſomuch as they ſtand jointly ſeiſed of one entire rent, it cannot be as to the one a rent ſeck, and as to the other a rent charge, and this diſtreſs is as an appurtenant to the Rent: and therefore if he which hath the Rent dieth, the ſurvivor ſhall diſtrain; and if both grant over the rent to another, he ſhall diſtrain for this. But if a man grant a rent out of Black acre to one and to his heirs, and grant to him that he may diſtrain for this in the ſame acre for term of his life, this is a rent charge for his life, and a rent ſeck after, diverſis temporibus. Otherwiſe it is if the diſtreſs be limited for certain years in the ſame Land, there this remains a Rent ſeck entirely, for that the fee and the freehold is ſeck in ſuch caſe.

If a man ſeiſed of Lands in fee, and poſſeſſed of a Term for many years, grant a rent out of both for life, in tail, or in fee, with clauſe of diſtreſs out of both, this Rent being a freehold doth iſſue onely out of the freehold, and the lands in leaſe are onely charged with a diſtreſs. But if he had granted the rent onely out of the lands in leaſe for term of the life of the Grantee, this had iſſued out of the term, and the land had been charged during the term, if the Grantee lived ſo long.

22 H. 6. 10. b. If a man be ſeiſed of 20. acres of land, and grant a rent of 20. ſhillings percipiend' de qualibet acra terræ meæ, (that is) out of every one acre of my land, this is a ſeveral grant out of every ſeveral Acre, and the Grantee ſhall have 20. pounds in all.

A. doth bargain and ſell land to B. by Indenture, and before inrollment they both grant a Rent charge by Deed to C. and after the Indenture is inrolled; ſome have ſaid, that this Rent charge is avoided: for, ſay they, it was the grant of A. and by the inrollment it hath relation to the delivery, which (ſay they) ſhall avoid the grant, notwithſtanding the confirmation of the other which had nothing in the land at that time. But the grant is good, and after the inrollment by the operation of the ſtatute, it ſhall be the grant of B. and the confirmation of A. But if the Deed had not been inrolled it had been the grant of A. and the confirmation of B. And ſo quacunque via data the grant is good.

Sect. 222.

¶ *Extinct*, cometh of the Verb Extinguere, to deſtroy or put out: and a Rent is ſaid to be extinguiſhed when it is deſtroyed and put out.

¶ *Apportion.* This cometh of the word Portio, quaſi Partio, which ſignifieth a part of the whole; and Apportion ſignifieth a Diviſion or partition of a Rent, common, &c. or a making of it into parts.

(a) Doct. & Stud. lib. 2. cap. 16. 21 H. 7. 2. 21 E. 3. 58. (a) The reaſon of this extinguiſhment is, becauſe the Rent is entire, and againſt common right, and iſſuing out of every part of the Land, and therefore by purchaſe of part it is extinct in the whole, and

(b) 30 Aſſ. 12. 9 Aſſ. 22. cannot be (b) apportioned; but by act in Law it may, as hereafter ſhall be ſaid.

(c) 46 E. 3. 32. 14 Aſſ. p. 14. 26 Aſſ. 38. (c) If the Grantee of a Rent charge purchaſe parcell of the Land, and the Grantor, by his Deed

¶ Item, ſi home ad un rent charge a luy & a ſes heires iſſuant hors de certein terr, ſil purchaſe alcun parcel de cel a luy & a ſes heires, tout le Rent charge eſt extinct, & lannuitie auxy, pur ceo que Rent charge ne poit per tiel maner eſtre apportion. Mes ſi home que aver Rent ſervice purchaſe parcel de la terre dont le Rent eſt iſſuant, ceo nextiendra tout, mes pur le parcel. Current ſervice en tiel cas

ALſo if a man hath a Rent charge to him and to his heirs iſſuing out of certain Land, if he purchaſe any parcell of this to him and to his heirs, all the Rent charge is extinct, and the Annuity alſo, becauſe the Rent charge cannot by ſuch manner be apportioned. But if a man which hath a Rent Service purchaſe parcell of the Land out of which the Rent is iſſuing, this ſhall not extinguiſh all, but for the parcell. For a Rent

poit

poit eſtre appoꝛtion ſolonque le value de la terre. Mes ſi un tient la terre de ſon Seignioꝛ per le ſervice de render a ſon Seignioꝛ annuelm̃t a tiel feaſt ũ chival, ou un eſperon doꝛ, ou un Clove-Gyloſer, & hujuſmodi, ſi en tiel cas l' Seignioꝛ purchaſe partel de la terre, tiel ſerbice eſt ale, pur ceo que tiel ſerbice ne poit eſtre ſever ne appoꝛtion.

Service in ſuch caſe may be apportioned according to the value of the land. But if one holdeth his land of his Lord by the ſervice to render to his Lord yearly at ſuch a feaſt a Horſe, a golden Spear, or a Clove-Gilliflower, and ſuch like, if in this caſe the Lord purchaſe parcell of the Land, ſuch ſervice is taken away, becauſe ſuch ſervice cannot be ſevered nor apportioned.

reciting the ſaid purchaſe of part, granteth that he may diſtrein foꝛ the ſame Rent in the reſidue of the land, this amounteth to a new grant, and the ſame Rent ſhall be taken foꝛ the like Rent, oꝛ the ſame in quantity. And ſo it is (d) if a man by Deed granteth a Rent charge out of his land to a man foꝛ life, and granteth farther by the ſame Deed, that he and his heirs may diſtrein in the land foꝛ the ſame Rent; this amounteth to a new grant of a Rent in fee ſimple. (d) 8 H.4.19.

But yet a Rent charge by the act of the party may in ſome caſe be appoꝛtioned. As if a man hath a Rent charge of 20. ſhillings, he may releaſe to the Tenant of the Land 10. ſhillings, oꝛ moꝛe oꝛ leſſe, and reſerve part; foꝛ the Grantee dealeth onely with that which is his own, viz. the Rent, and dealeth not with the Land, as in caſe of purchaſe of part. And ſo was it holden in the Common place, Hill. 14 Eliz. which I my ſelf heard and obſerved. Hill.14 Eliz.

So (e) if the Grantee of an Annuity oꝛ Rent charge of 20. pound grant 10. pound, parcel of the ſame Annuity oꝛ Rent charge, and the Tenant attoꝛn, hereby the Annuity oꝛ Rent charge is divided. (e) 9 H.6.12.53. F.N.B. 152.D.E.

And (f) when the rent charge is extinguiſhed by his purchaſe of part of the land, he ſhall never have a Writ of Annuity, becauſe it was by the grant a rent charge, and he hath diſcharged the land of the rent charge by his own act, by purchaſe of part. And therefoꝛe he cannot by Writ of Annuity diſcharge the land of the diſtreſſe, as Littleton hath befoꝛe ſaid. But if the rent charge be determined by the act of God oꝛ of the Law, yet the Grantee may have a writ of Annuity. As if Tenant foꝛ another mans life by his Deed grant a Rent charge to one foꝛ 21. years, Ceſty que vie dieth, the rent charge is determined, and yet the Grantee may have during the years a Writ of Annuity foꝛ the arrerages incurred after the death of Ceſty que vie, becauſe the rent charge did determine by the act of God, and by the courſe of law. Actus legis nulli facit injuriam. The like Law is, if the land out of which the Rent charge is granted be recovered by an elder title, and thereby the Rent charge is voided, yet the Grantee ſhall have a writ of Annuity, foꝛ that the Rent charge is avoided by the courſe of Law: and ſo it was holden in Wards Caſe abode remembred againſt an opinion obiter in 9 H.6.42. a. (f) 14 E.4.4. 22 E.4. Le darrein caſe 31. 7 H.6. 9 H.6.1. 5 H.7.33. Wards caſe cited in L. in Heywards caſe, fo.36. 9 H.6.42. 2.

¶ *Car rent ſervice en tiel caſe poet eſte apportion.* Whether this appoꝛtion was at the Common Law, oꝛ by the foꝛce of the ſtatute of Quia emptores terrarum, hath been a queſtion in our Books. * And it appeareth by Littleton that it was ſo at the Common Law; foꝛ when he citeth any thing pꝛovided by any ſtatute, he citeth the ſtatute, as he hath done this very act befoꝛe. 2. Littleton ſpeaketh here indefinitely of Rent ſervice, and there be diders kinds of Rent ſervices which are not within that ſtatute, and yet ſuch Rent ſervices are appoꝛtionable by the Common Law: as if a man maketh a leaſe foꝛ life oꝛ years, reſerving a Rent, and the Leſſee ſurrender part to the Leſſoꝛ, the Rent ſhall be appoꝛtioned. So if the Leſſoꝛ recovereth part of the land in an action of waſte, oꝛ entreth foꝛ a foꝛfeiture in part, the Rent ſhall be appoꝛtioned. * Brook tit. apportionment 28. 18 E.3.49. 22 Aſſ.52. 3 Aſſ.18.18 E.2. Avowry 218. Vide lib.6. fol.1,2. in Bruertons caſe. Vid. lib.8. fol.105,106. in Talbots caſe.

(g) So likewiſe if the Leſſoꝛ grant part of the reverſion to a ſtranger, the Rent ſhall be appoꝛtioned, foꝛ the Rent is incident to the reverſion. (h) So it is if Tenant by Knights ſervice by his laſt will and teſtament in writing deviſeth the Reverſion of two parts of the lands, the Deviſee ſhall have two parts of the Rent. (g) 14 H.8.12. Vid. Lib.8. fol.79. in Wildes caſe. Paſch. 39 Eliz. Rot.233. So it was adjudged inter Collins & Harding.

And theſe caſes are in mine opinion rightly adjudged againſt a ſudden opinion in Hill. 6 & 7 E.6. repoꝛted by Meꝛjeant Bendloe to the contrary. Note what inconvenience ſhould follow, if by the ſeverance of the reverſion the Rent ſhould be extinct. (h) Tr. 43 Eliz. Rot.243. inter Weſt & Laſſels, & Hill. 42 Eliz. Rot.108. in Communi Banco, inter Ewer & Moyle.

¶ *Purchaſe parcell de la terre.* This is intended of a Fee ſimple: foꝛ if there

there be a Lord and Tenant of forty acres of Land by fealty, and twenty ſhillings Rent, (i) if the Tenant maketh a gift in tail, or a Leaſe for life or years of parcel thereof to the Lord; in this caſe the Rent ſhall not be apportioned for any part, but the Rent ſhall be ſuſpended for the whole: for a Rent ſervice (ſaith Littleton) may be extinct for part, and apportioned for the reſt; but a Rent ſervice cannot be ſuſpended in part by the act of the party, and in eſſe for other part. So it is if the Lord enter upon the Leſſee for life or years into part, and thereof diſſeiſe or put out the Leſſee, the Rent is ſuſpended in the whole, and ſhall not be apportioned for any part. And where our Books (k) ſpeak of any apportionment in caſe where the Lord enters upon the Leſſee in part, they are to be underſtood where the Lord enters lawfully, as upon a ſurrender, forfeiture, or ſuch like; where the Rent is lawfully extinct in part. And yet by act in Law a Rent ſervice may be ſuſpended in part, and in eſſe for part. (l) As when the Gardian in Chivalry entreth into the Land of his Ward within age, now is the Seigniory ſuſpended: but if the Wife of the Tenant be endowed of a third part of the Tenancy, now ſhall ſhe pay to the Lord the third part of the Rent. (m) And ſo it is if the Tenant give a part of the Tenancy to the father of the Lord in Tail, the father dieth, and this deſcends to the Lord; in this caſe by act of Law the Seigniory is ſuſpended in part, and in eſſe for part, and the ſame Law is of a Rent charge.

(i) 38 H.8. tit. Extinguiſhment Br. 48. 11 E.3. Ceſſavit 21. 17 E 3. 57. a.

(k) 21 E.4. 29. 9 E.4. 1. 7 H.6. 26. 4 H.7. 6. b. 11 E.3. Ceſſavit 21.

(l) 33 E.3. Dower 138.

(m) 30 Aſſ. p. 12.

Likewiſe a Seigniory may be ſuſpended in part by the act of a ſtranger: (n) As if two Joyntenants or Coparceners be of a Seigniory, and one of them diſſeiſe the Tenant of the land, the other Joyntenant or Coparcener ſhall diſtrain for his or her motety.

(n) 27 E.3. 88.

Concerning the apportionment of Rents, there is a difference between a grant of a Rent, and a reſervation of a Rent: for (o) if a man be ſeiſed of two acres of Land, of one in Fee-ſimple, and of another in tail, and by his Deed grant a Rent out of both in fee, in Tail, for life, &c. and dieth, the land intailed is diſcharged, and the Land in Fee ſimple remains charged with the whole Rent, for againſt his own grant he ſhall not take advantage of the weakneſs of his own eſtate in part. (p) But if he make a gift in tail, a leaſe for life or for years of both acres, reſerving a Rent, the Donor or Leſſor dieth, the iſſue in tail avoideth the gift or leaſe, the rent ſhall be apportioned; for ſeeing the Rent is reſerved out of and for the whole land, it is reaſon that when part is evicted by an elder title, that the Donee or Leſſee ſhould not be charged with the whole Rent, but that it ſhould be apportioned ratably according to the value of the Land, as Littleton here ſaith.

(o) 12 H.4. 17. 17 Ed. 3. Dower 164. 30 Aſſ. p. 12.

(p) 20 H.6. 3. 9 E.4. 1. 2. 35 H.8. Dier 56. 7 E.6. Dier 82. 9 E.3. 6 H.4. 17.

(q) If a man grant a Rent charge out of two acres, and after the Grantee recovereth one of the acres againſt the Grantor by a title paramount, the whole Rent ſhall iſſue out of the other acre: but if the recovery be by a faint title by Covine, then the Rent is extinct for the whole, becauſe he claimeth under the Grantor.

(q) Doct. & Stud. l. 2. c. 17.

If a man infeoffeth B. of one acre in fee upon condition, and B. being ſeiſed of another acre in fee, granteth a Rent out of both acres to the feoffor, who entreth into the one acre for the condition broken, the whole Rent ſhall iſſue out of the other acre, becauſe his title is paramount the grant. But if a man maketh a leaſe for life of black acre and white acre, reſerving two ſhillings Rent, upon condition that if the Leſſee doth ſuch an act, &c. that then he ſhall have fee in black acre: the Leſſee performs the condition, albeit now by relation he hath the fee ſimple ab initio; yet ſhall the Rent be apportioned, for that the reverſion of one acre whereunto the Rent was incident, is gone from the Leſſor, and ſo note a diverſity between a Rent in groſſe, and a Rent incident to a reverſion, concerning the apportionment thereof. And yet in ſome caſes a Rent charge ſhall not be wholly extinct, where the Grantee claimeth from and under the Grantor. As if B. maketh a leaſe of one acre for life to A. and A. is ſeiſed of another acre in fee, A. granteth a Rent charge to B. out of both acres, and doth waſte in the acre which he holdeth for life, B. recovereth in waſte, the whole Rent is not extinct, but ſhall be apportioned, and yet B. claimeth the one acre under A. And ſo it is if A. had made a feoffment in fee, and B. had entred for the forfeiture, the Rent is to be apportioned, and is not wholly extinct: and the reaſon hereof is, for that it is a Maxime of Law. That no man ſhall take advantage of his own wrong, Nullus commodum capere poteſt de injuria ſua propria: And therefore ſeeing the waſt and forfeiture were committed by the act and wrong of the Leſſee, he ſhall not take advantage thereof to extinguiſh the whole Rent: and the whole Rent cannot iſſue onely out of the other acre, becauſe the Leſſor hath the one acre under the eſtate of the Leſſee, and therefore it ſhall be apportioned. * If the King give two acres of land of equal value to another in fee, fee tail, for life or years, reſerving a Rent of two ſhillings, and the one acre is evicted by a title paramount, the Rent ſhall be apportioned.

* Dier Mich. 7 & 8 Eliz. Manuſcript, the Earle of Huntingdons caſe, Vide F. N. B. 234. b. Briefe de Onerando pro rata porc.

¶ *Mes ſi un home tient ſa terre, &c. per ſervice de render annuelment, &c. un Chival ou un Eſperon d'or, &c. ſi en tiel caſe le Seignior purchaſe parcel del terre, tiel ſervice eſt ale.*

¶ *Chival.*

¶ *Chival.* Note, In Latine Deſtrarius is a great horſe, or a horſe of Service; of the French word Deſtrier: Palfridus a horſe to travell on, of the French word Palfray: And Runcinus a Nag, (you ſhall often read of them in Records;) it cometh of the Italian word Roncino. But admit that parcel of the land holden by ſuch entire ſervice come to the Lord by deſcent; whether ſhall the entire ſervice wholly remain, or be extinct? and it is holden, that in ſome caſe it ſhall be extinct for the whole, as Suit ſervice, and ſuch other intire annual Suit ſervices. But if the ſervice be, to render yearly at ſuch a feaſt a horſe, or the like, and the Tenant infeoffe the Father of the Lord of part, which deſcends; yet the Feoffor ſhall hold by a horſe, becauſe the ſervice was multiplied, and each of them, viz. the Feoffor and the Feoffee, held by a horſe.

Anno 6 R.2. Rot.3. War. Bruertons caſe, lib. 6. fo.2. 34 Aſſ.15. 35 H.6. Exec. 21. Pl.Com.72. 40 E.3.40. 5 E.2. tit. Avowry 206.

A. hath common of paſture ſauns nombre in twenty acres of land, and ten of thoſe acres deſcend to A. the common ſauns nombre is intire and uncertain, and cannot be apportioned, but ſhall remain. But if it had been a Common certain, (as for ten beaſts) in that caſe the Common ſhould be apportioned. And ſo it is of Common of Eſtovers, of Turbary, of Piſchary, &c. And yet in none of theſe caſes the deſcent, which is an act in Law, ſhall work any wrong to the Terre-Tenant, for he ſhall have that which belongeth to him; for the act in Law ſhall work no wrong.

If three Joyntenants hold by an entire yearly rent, as of a horſe, or of a grain of wheat, and the Tenant ceſſe by two years, and the Lord recover two parts of the land againſt two of them, and the third ſaves his part by tendring of the rent, &c. and finding ſurety; albeit the Lord come to the two parts by lawful recovery, grounded upon the default and wrong of the two Joyntenants, yet ſhall the entire annual Rent be extinct.

F.N.B.209. 40 E.3.40.

If the Tenant holdeth by fealty and a buſhel of wheat, or a pound of Cummin, or of Pepper, or ſuch like, and the Lord purchaſeth part of the Land, there ſhall be an apportionment, as well as if the rent were in mony: and yet if the rent were by one grain of wheat, or one ſeed of Cummin, or one Pepper-corn, by the purchaſe of part the whole ſhould be extinct. But if an entire ſervice be pro bono publico, as Knights ſervice, Caſtle-gard, Coynage, &c. for the defence of the Realm, or to repair a bridge or a way, to keep a Beacon, or to keep the Kings Records, or for advancement of juſtice and peace, as to aid the Sheriff, or to be Conſtable of England, though the Lord purchaſe part, the ſervice remains. So it is if the tenure be pro opere devotionis ſive pietatis, as to find a Preacher, or to provide the ornaments of ſuch a Church: or pro opere charitatis, as to marry a poor Virgin, or to bind a poor boy Apprentice, or to feed a poor man. And ſo note a diverſity between theſe caſes, and entire ſervices for the private benefit of the Lord.

Vide Litt.Cap.Tenant in Common 71. b. Lib.6. fo.1,2. in Bruertons caſe. Lit.fo.42.11 H.7.12.b. 24 H.8.Tenures 53.Brooke. 35 H.6.6. 11 El. Diet 285. 16 E.3. Avowry 93.

Sect. 223.

¶ Mes ſi un home tient ſa terre dun auter per homage, Fealtie, & Eſcuage, & per certeine Rent, ſi le Sſir purchaſe parcell de la tẽ, &c. en tiel cas l' rent ſera appoꝛtion, come eſt avantdit; mes untoꝛe en ceſt caſe l' homage & fealty demurront entier a le Sſir: car le Seignioꝛ avera le homage & fealtie de ſon tenant pur le remnant de les

BUT if a man hold his land of another by homage, fealty, and Eſcuage, and certain Rent, if the Lord purchaſe part of the land, &c. in this caſe the rent ſhall be apportioned, (as is aforeſaid;) but yet in this caſe the Homage and Fealty abide entire to the Lord: for the Lord ſhall have the homage and fealty of his Tenant for the reſt of the Lands and Tenements

¶ *Purchaſe parcel del tef, &c.* Here by this (&c.) is implied, that the reaſons wherefore homage and fealty remain and are not extinct in this caſe are, firſt, becauſe it can be no loſſe to the Tenant, as it might in the caſe of an horſe, or other entire ſervice; for there it may be the remnant is not ſufficient in value to pay it. Secondly, there is no land but it muſt be holden by ſome ſervice or other, and homage and fealty are the leaſt and leaſt chargeable ſervices to the Tenant.

Bruertons caſe ubi ſupra. 5 E.2. Avowry 206.

¶ *Pur ceo que tiel ſervices ne ſont paſſe annual ſervices, &c.* This is Ratio una, but not unica, as it appeareth by that which hath

hath bẽn ſaid. If there be Lord and Tenant by Fealty and Herriot ſervice, and the Lord purchaſe part of the land, the Herriot ſervice is extinct, (and yet it is not annual, but to be paid at the death of the Tenant) becauſe it is entire and valuable.

Bruertons caſe lib.6. Talbots caſe lib.8. fo.104. 8 H. 7. 11.

¶ *Solonque lafferance & rate de la terre, &c.* Here is by this (&c.) implyed, That in ſome caſe where it is entire and valuable, and not annual, it ſhall not (as hath bẽn ſaid) be extinguiſhed by purchaſe of part, (*) as Knights ſervice which is to be performed by the body of a man, if the Lord purchaſe part, yet the Tenure by Knights ſervice remains for the reſidue, Quia pro bono publico, & pro defenſione regni, but the Eſcuage ſhall be apportioned, as here Littleton ſaith, becauſe that is for the benefit of the Lord, and yet it is caſual and not annual. And where our Author ſpeaketh of Services, it is implied that a Herriot cuſtome, though it be entire, valuable, and not annual, by the purchaſe of part ſhall not be extinct. On the other part, when the Tenure is by an entire ſervice, and the Tenant alien part of the Tenancy, in what caſes the Rent ſhall be multiplied, (that is) where the Feoffor and the Alienee ſhall pay the entire Rent ſeverally, (for regularly it holdeth, that Quæ in partes dividi nequeunt, ſolida à ſingulis præſtantur) and where not, you may read at large in my* Reports.

terres & tenements tenus de luy, come il avoit advant, pur ceo que tiels ſervices ne ſont paſſe annual ſervices, & ne poient eſtre apportion; mes leſcuage poit, & ſerra apportion ſolonque lafferance & rate de la terre, &c.

holden of him, as he had before, becauſe that ſuch ſervices are no yearly ſervices, and cannot be apportioned; but the Eſcuage may and ſhall be apportioned according to the quantity and rate of the land, &c.

(*) 7 E. 3. 29. Talbots caſe, l. 8. fol. 104.

(*) Bruertons caſe lib. 6. fol. 1, 2. Talbots caſe l. 8. fol. 104.

And by this (&c.) is alſo implied, that the apportionment ſhall not be according to the quantity of the land, but according to the quality or value thereof, as by that which hath bẽn ſaid appeareth.

Sect. 224.

5 E. 2. Avowry 200. 21 E. 3. 58. b. 34 Aſſ. 15. Tit. Apporrionment, B. 28. 9 Aſſ. 22. 30 Aſſ. Pl. 12.

¶ NOte here a diverſity, when the Grantee of a Rent charge cometh to a part of the Land charged by his own act, and when by the courſe of Law.

¶ *Purchaſe parcel de les Tenements charges en fee.* And ſo it is if the Tenant giveth to the father of the Grantee part of the land in Tail, and this deſcend to the Grantee, the Rent ſhall be apportioned, and ſo by act in Law a Rent charge may be ſuſpended for one part, and in eſſe for another.

34 H. 6. 41. b.

And ſo it is if the Father be Grantee of a Rent, & the ſon purchaſe part of the Land charged, & the Father dieth, after whoſe death the Rent deſcends to the ſon, the rent ſhal be apportioned, and ſo it is if the Grantee grant the Rent to the Tenant of the Land, and to a ſtranger, the rent is extinct but for a moiety.

¶ Item, ſi home ad un rent charge, & ſon pier purchaſe parcel de les Tenements charges en fee, & mozuſt, & cel parcel deſcend a ſon fits, q̃ ad l'rent charge, ore cel charge ſerra apportion ſolonque le value de la tr̃ come eſt avant dit de Rent ſervice, pur ceo que tiel portion de la terre purchaſe per la piere, ne vient al fits per ſon fait demeſn, mes per diſcent & p courſe del Ley.

ALſo, if a man hath a rent charge, and his Father purchaſe parcell of the Tenements charged in fee, and dieth, and this parcel deſcends to his ſon who hath the Rent charge, now this charge ſhall be apportioned according to the value of the Land, as is aforeſaid of Rent ſervice, becauſe ſuch portion of the Land purchaſed by the Father, cometh not to the ſon by his own fact, but by deſcent, and by courſe of Law.

If a man hath iſſue two daughters, and grant a rent charge out of his land to one of them, and dieth, the Rent ſhall be apportioned; and if the Grantee in this caſe infeoffeth another of her part of the land, yet the moiety of the rent remaineth iſſuing out of her ſiſters part, becauſe the part of the Grantee in the land by the deſcent was diſcharged of the Rent. But in all theſe caſes where the Rent charge is apportioned by act in Law, yet the writ of Annuity faileth; for if the Grantee ſhould bring a Writ of Annuity, he muſt ground it upon the grant by Deed, and then muſt he (as hath been ſaid) bring it for the whole. 9 Aſſ. 22. 5 R. 2. Annuity 21.

Annua nec debitum Judex non ſeparat ipſum.

Alſo in reſpect of the realty the Rent is apportioned, but the perſonalty is indiviſible, and by act in Law ſhall not be divided. If Execution be ſued of body and lands upon a ſtatute Merchant or ſtaple, and after the inheritance of part of thoſe lands deſcend to the Conuſee, all the execution is avoided, for the duty is perſonal, and cannot be divided by act in Law. Pl. Com. 72. 35 H. 6. tit. Execut. 21. 15 E. 4. 5.

¶ *Ne vient al fitz per ſon fait demeſne, mes per diſcent & per courſe del ley.*

If the father within age purchaſe part of the land charged, and alieneth within age and dieth, the ſon recovereth in a writ of Dum fuit infra ætatem, or entereth: in this caſe the act of Law is mixt with the act of the party, and yet the Rent ſhall be apportioned, for after the recovery or entry the ſon hath the land by deſcent.

So it is in caſe the ſon recovereth part of the land upon an alienation by his father Dum non fuit compos mentis, the Rent ſhall be apportioned for the cauſe aforeſaid.

A man ſeiſed of lands in fee taketh a wife, and maketh a Feoffment in fee, the Feoffee grants a Rent charge of x. pound out of the land to the Feoffor and his wife, and to the heirs of the husband; the husband dieth, the wife recovereth the moiety for her Dower by the cuſtome; the Rent charge ſhall be apportioned, and ſhe may diſtrein for v. pound, which is the moiety of the Rent. In which caſe two notable things are to be obſerved. Firſt, albeit the Dower be by relation or fiction of Law above the Rent, yet when the wife recovereth her Dower, ſhe ſhall not have her entire rent out of the reſidue: for a relation or fiction of Law ſhall never work a wrong or charge to a third perſon, but In fictione juris ſemper eſt æquitas. Secondly, that albeit her own act do concur with the act in Law, yet the rent ſhall be apportioned. 5 E. 2. Avowry 206. Lib. 3. fol. 29. in Butler & Bakers caſe.

Sect. 225.

¶ Item, ſi ſoit Sſir & tenant, & le tenant tient de ſ̄ Seignior per fealty & certaine rent, & le Sſir grant le rent q̄ ſ̄ fait a un auter, &c. reſervant a luy le fealty, & le tenant atturna al grantée de l' rent, ore tiel rent eſt rent ſeck a le grantée, pur ceo que les tenements ne ſont tenus del grantor de le Rent, mes ſont tenus del Seignior que reſerve a luy fealty.

ALſo, if there be Lord and tenant, & the Tenant holds of his Lord by fealty and certain Rent, and the Lord grant the Rent by his deed to another, reſerving the Fealty to himſelf, and the Tenant atturns to the Grantee of the Rent, now this rent is rent ſeck to the grantee, becauſe the tenements are not holden of the Grantor of the Rent, but are holden of the Lord who reſerved to him the fealty.

¶ *Tle Seignior granta le Rent, &c.*

So it is if the Lord releaſe the Rent to the Tenant ſaving the fealty, the Rent is extinct. But if there be Lord & Tenant by Fealty & Rent, and the Lord by his Deed reciting the Tenure releaſe all his right in the land ſaving his ſaid Rent, the Seigniory remains, and he ſhall have the rent as a rent Service, and the fealty incident to it, for the ſaid rent is as much to ſay as the Rent Service, whereunto fealty is incident. 12 E. 4. 11. 9 E. 3. 1. 40 E. 3. 22. b. 13 E. 3. tit. Releaſes 36.

And if the Lord hath iſſue two Daughters and dieth, and upon partition the fealty is allotted to the one, and the rent to the other, ſhe ſhall have the rent as a rent ſeck. 17 E. 3. 72. b.

If there be Lord of a Mannor and Tenant by Fealty, Suit of Court and Rent, the Lord grants the Fealty ſaving to him the Suit of Court and Rent; the ſaving is good for the Rent, but not for the Suit of Court, becauſe the Grantee 17 E. 3. 72. b.

tee can keep no Court, and there is no tenure of the Grantor, and therefore the suit of Court is loſt and periſhed in that caſe.

If the Donee hold of the Donor by fealty and certain Rent, and the Donor grant the ſervices to another, and the Tenant attorn, ſome have ſaid the Rent ſhall not paſs, becauſe the Rent cannot paſs but as a Rent ſervice, being granted by the name of ſervices, and the fealty cannot paſs, becauſe (as hath been ſaid) the fealty is an incident inſeparable to the reverſion. But it ſeemeth, that the Rent ſhall not paſs as a Rent ſeck, becauſe at the time of the grant it was a Rent ſervice in the Grantor; and therefore there be words ſufficient to paſs it to the Grantee, and it is not of neceſſity that it ſhall be a Rent ſervice in the hands of the Grantee.

7 E.3. 2.b. Fitz-Warrens caſe. If there be Lord and Tenant by fealty and certain Rent, and the Lord by deed grant the Rent in fee ſaving the fealty, and grant farther by the ſame Deed, that the Grantee may diſtrein for the ſame Rent in the tenancy, albeit a Diſtreſſe were incident to the Rent in the hands of the Grantor; and although a Tenant attorn to the grant, yet cannot the Grantee diſtrein, for the Diſtreis remains as an incident inſeparable to the Seigniory, for then the Tenant ſhould be ſubject to two ſeveral diſtreſſes of two ſeveral men. And ſo it is if the Lord in that caſe grant the Rent in tail or for his life, ſaving his fealty and farther grant that the Grantee may diſtrein for it, albeit the reverſion of the Rent be a Rent ſervice; yet the Donee or Grantee ſhall have it but as a Rent ſeck, and ſhall not diſtrein for it.

7 E.3. 2,3. Adjudged.

31 Aſſ. 31. 17 Aſſ. 10.
32 Aſſ. pl.10. F.N B.178.D.
22 H.6.3 b. 4 E.2. Aſſ. 449.
28 H.8. Dier 31.

It is to be obſerved, that where a Rent ſervice is become a Rent ſeck by ſeverance of the ſame from the Seigniory, that now the nature of the Rent is changed. For if the Grantee purchaſe part of the land, the whole Rent ſhall be extinct. And whereas for an Aſſiſe for a Rent ſervice, all the Tenants of the land need not to be named, but ſuch as did the diſſeiſin: Yet in Aſſiſe for the Rent ſeck which ſometimes was a Rent ſervice, all the Tenants muſt be named as in caſe of a rent charge, albeit he were diſſeiſed by one ſole Tenant, * but if the Lord of a Mannor releaſe the fealty to his Tenant ſaving the Rent, or that a Meſnalty become a Rent by ſurpluſage, thoſe that are now Seck (and ſometime were ſervice) are part of the Mannor, but a Rent charge cannot be part of a Mannor.

* 31 Aſſ. 23. 22 Aſſ. 53.

¶ *Attorne, &c.* Of Attornement ſhall be hereafter ſaid in his proper Chapter and place.

Sect. 226.

¶ *SI le Seignior voet granter per ſon fait le homage, &c.* It is to be obſerved, that where the Seigniory is by homage, fealty and rent, (a) if the Lord grant away the Homage, the Fealty ſhall paſs, for fealty is an incident inſeparable to homage (b) and cannot by any ſaving in any grant be ſeparated from it, for homage cannot be ſole or alone; but the rent, (though it be not ſaved) ſhall not paſs in that caſe, becauſe the Rent is not incident to homage. And ſo it is if there be Lord and Tenant by fealty and rent, and the Lord grant over the fealty without any ſavings, the Rent paſſeth not, but fealty hath an incident inſeparable belonging to it, which by no ſaving can be ſeparated; and that is Diſtreis; for, as Littleton ſaith here, a ſervice cannot be ſeeke, (that is) without ſome

(a) 40 E.3.22. per Curiam.

(b) 44 E.3.19,20. 39 H.6.25.29. Aſſ. pl. 20. 26 Aſſ.p. 38.

¶ EN meſm̃ le mā-ner eſt lou home tient ſa terre per homage, fealty, & certain rent, ſi le Sr̃ grant la rent, ſavant a luy le homage, tiel rent apres tiel grant eſt rent ſeche. Mes la ou terres ſont tenus per homage, fealty, & certain rent, ſi le Sr̃ voit granter per s̃ fait le homage de ſon tenant a un auter, ſavant a luy le remnant de les ſervices, & le tenant atturna a luy ſolonque le forme del graunt, en ceſt caſe le tenant tiendra

IN the ſame manner, where a man holds his land by homage, fealty, and certain rent, if the Lord grant the rent, ſaving to him the homage, ſuch rent after ſuch grant is rent ſeck. But there where lands are holden by homage, fealty, and certain rent, if the Lord will grant by his deed the homage of his Tenant to another, ſaving to him the remnant of his ſervices, and the Tenant attorn to him according to the forme of the grant, in this caſe

tiendra la terre del grantée, & le Sñr q̄ grantaſt le homage navera forſq̄ le rent come rent ſeck, & ne unques diſtreynera pur le rent, pur ceo que homage, ne fealtie, ne eſcuage, ne poit eſtre dit ſeck, car nul tiel ſervice poit eſtre dit ſeck. Car celuy que ad ou doit aver homage ou fealty, ou eſcuage de la terre, poit per common droit diſtreiner pur ceo ſil ſoit aderere. Car homage, fealtie, & eſcuage, ſont ſervices per queux terres ou tenements ſont tenus, &c. & ſont tiels q̄ en nul maner poiēt eſtr̄ pr̄iles forſq̄ cōe ſervices, &c.

the Tenant ſhall hold his lands for the grantee, and the Lord who granted the Homage ſhall have but the rent as a Rent ſeck, & ſhall never diſtrain for the rent, becauſe that homage nor fealty nor eſcuage cannot be ſaid ſeck, for no ſuch ſervice may be ſaid ſeck. For he which hath or ought to have Homage, fealty, or eſcuage of his Land, may by common right diſtrain for it, if it be behind. For Homage, Fealty, and Eſcuage, are Services by which Tenements are holden, &c. and are ſuch ſervices as in no manner can be taken but as Services, &c.

diſtreſs belonging to it, for then it were not a ſervice: and ſo of Homage and Eſcuage.

¶ *Terres ou Tenements ſont tenus, &c.* By this (&c.) and out of this Section it may be collected, that if (c) there be Lord and Tenant by Fealty and Rent, the Annual Rent, which is a profitable Service, is of higher and more reſpect in Law then the Fealty, and therefore by the grant of the Rent, the Fealty ſhall paſs as an incident thereunto: but it is an incident ſeparable, and therefore may be by a Saving, as Littleton hath ſaid, ſeparated from it. And ſo when the tenure is by Fealty and Rent, and the rent is recovered, the Fealty ſhall includedly be recovered. (d) And where the tenure is by Homage, Fealty and Rent, by the recovery of the Rent with the appurtenances upon a former right, the homage and fealty alſo ſhall be reſtored by neceſſity and indulgence of the Law: for ſeeing the Law giveth no Præcipe for the Homage and Fealty, but for the Rent only, reaſon would that by the recovery of the Rent the whole entire Seigniory ſhall be includedly reſtored in that caſe.

(c) 44 E.3.19. 26 Aſſ. 38. 29 Aſſ.p.20. 9 E.3. 2. 39 H.6. 24,25. 27 H.8.20. 8 E.4.28.

(d) Temps H.8. Br.tit. Incidents 4. 44 E.3. 19. 29 Aſſ. 20. 39 H.6. 24,25.

But if the recovery be without title, there the rent is recovered by a Rent ſeck, for that worketh no more then a grant. (*) but by the recovery of a mannor, whether it be by title or without title, homage, fealty, and all other Services parcel of the Mannor are recovered. And albeit Fealty cannot be divided from Homage by grant, (as hath been ſaid) yet by extinguiſhment it may: (e) as if there be Lord and Tenant by Homage, Fealty and Rent, and the Lord releaſe the Seigniory and Services, or all his right in the Land ſaving the Fealty and Rent, or ſaving the ſaid Rent, or if he by expreſs words releaſe the Homage, ſaving the Fealty and Rent, there the Fealty and Rent remain, for the Homage is extinct. and ſo note a diverſity between a Grant and a Releaſe in that caſe. But ſo long as Homage continues, the Fealty cannot be divided from it.

(*) Vide Sect. 149.

(e) 9 E.3.1.

¶ *Forſque come ſervices, &.* Here is implied a diverſity between theſe corporal ſervices of Homage, Fealty, and Eſcuage, which cannot become ſeck or dry, but make tenure; whereunto Diſtreſs, Eſcheats, and other profits be incident, and other corporal ſervices, as to plough, repair, attend, and the like, and all Rents whatſoever, for they may become ſeck or dry, and make no tenure,

Sect. 227.

¶ MEs auterment eſt de rent que fuit un foits rent ſervice, pur ceo que quant

BUT otherwiſe it is of a Rent which was once Rent Service, becauſe when it is ſevered

¶ ET *le ſeignior ne poet grant tiel rent ove diſtreſs, come eſt dit.* (f) For the

(f) 7 E.3. 2,3.

the diſtreſs is an incident inſeparable to the fealty, as hath been ſaid: (g) and therefore a Releaſe of diſtreſs is void.

(g) 7 E. 4. 11. 8 H. 7. 4, 5.

¶ *Incident*, Incidens is a thing appertaining to or following another, as a more worthy or principal, whereof you ſee here, and in divers other places of Littleton's examples. And of incidents ſome be ſeparable, & ſome inſeparable, as hath been ſaid.

ſil eſt ſever per le grant le Seignior de les auters ſervices, il ne poit eſtre dit rent Service, pur ceo que il ne ad a ceo fealty, que eſt incident a chelcun manner de rent ſervice, & pur t̄ eſt dit rent ſecke. Et le Seignior ne poit grant tiel rent ove diſtreſſe, come eſt dit.

by the grant of the Lord from the other ſervices, it cannot be ſaid Rent ſervice, for that it hath not fealty unto it, which is incident to every manner of Rent Service, and therefore it is called Rent ſeck. And the Lord cannot grant ſuch a Rent with a diſtreſs, as it is ſaid.

Sect. 228.

¶ *Savant a luy reverſion, &c.* By this word (&c.) is to be obſerved, (h) that this Rent reſerved is a Rent Service, and hath fealty incident to it, and both Rent and fealty are incident to the Reverſion, viz. (i) the rent incident to the Reverſion ſeparably, but the fealty incident to the Reverſion inſeparably: but by the grant of the Rent, the fealty in this caſe ſhall not paſs, becauſe the fealty is inſeparably incident to the Reverſion, but the Grantee ſhall have the rent as a Rent ſeck. Alſo by this (&c.) is implied an attornment of the Tenant, for without that although by the grant the Rent is turned to a Rent Seck, ſo as the Tenant cannot be charged with any diſtreſs, yet to the paſſing thereof there muſt be an Attornment.

(h) 41 E. 3. 16.

(i) 12 E. 4. 3. 32 H. 8. tit. Patents. Br. 26 Aſſ. 66. 48 E. 3. 9. b. Doct. & Stud. lib. 2. cap. 9.

¶ Item ſi hõe leſſa a un auter terr̃s pur terme de vie, reſervant a luy certein rent, Sil grãt le rent a un auter p̃ ſon fait, ſalvãt a luy le reverſion de la terre iſſint leſſe, &c. tiel rent eſt forſq̃ rent ſeck, pur ceo que l'grantee nad riens en le reverſion del terre, &c. Mes ſil grant le reverſion del terre a un auter pur terme d̃ vie, & le tenant atturne, &c. donques ad le grantee le rent come rent ſervice, pur t̄ que il ad le reverſion pur terme de vie.

ALſo if a man let to another lands for term of life, reſerving to him certain rent, if he grant the rent to another by his Deed, ſaving to him the reverſion of the land ſo letten, &c. ſuch rent is but a rent ſeck, becauſe that the grantee had nothing in the Reverſion of the land, &c. But if he grant the Reverſion of the land to another for term of life, and the Tenant attorne, &c. then hath the grantee the Rent as a Rent ſervice, for that he hath the reverſion for term of life.

¶ *Attorne, &c.* Here is implied by this (&c.) an attornment in the life of the Grantee, and other incidents to an attornment, whereof you ſhall read more at large in the Chapter of attornment.

¶ *Donques ad le grantee le rent come rent ſervice pur ceo il ad le reverſion pur terme de vie.* And the reaſon hereof is, becauſe the Rent is incident to the Reverſion, as hath been ſaid, and (as Littleton ſaith here) paſſeth away by the grant of the reverſion, as with the Superior, without ſaying, Cum pertinentiis, &c. for the Reverſion cannot be ſeck: But by the grant of the Rent the Reverſion doth not paſs.

Sect.

Sect. 229.

¶ Et iſſint eſt a entendue que ſi home dona terrez ou tenements en le taile, rendant a luy & a ſes heires certeine Rent, ou leſſa terre pur terme de vie, rendant certeine rent, ſil granta le reverſion a un auter, &c. & le tenant atturna, tout le rent & ſerbice paſſe per ceſt parol (reverſion) pur ceo que tiel rent & ſerbice en tiel cas ſont incidents a le reverſion, & paſſont per le grant de l' reverſion. Mes coment que il granta le rent a un auter, le reverſion ne paſſa my pur tiel grant, &c.

AND ſo it is to be intended, that if a man give Lands or Tenements in tail, yielding to him and to his heirs a certain rent, or letteth Land for term of life, rendring a certain rent, if he grant the Reverſion to another, &c. and the Tenant atturn, all the Rent and Service paſs by this word (Reverſion) becauſe that ſuch rent and Service in ſuch caſe are incident to the reverſion, and paſs by the grant of the reverſion. But albeit that he granteth the Rent to another, the Reverſion doth not paſs by ſuch Grant, &c.

¶ This næds no explication, but is evident by that which formerly hath bæn ſaid, ſaving by this (&c.) in the end is implied the old rule, That the incident ſhall paſſe by the grant of the principal, but not the principal by the grant of the incident, Acceſſorium non ducit, ſed ſequitur ſuum Principale.

Sect. 230.

¶ Iſſint nota le diverſitie. Et iſſint eſt tenus, P. 21 E. 4. Mes il eſt adjudge, An. 26. lib. Aſſiſarum, ou les ſerbiſes del tenant en taile fueront grants, que t̄ fuit bone grant, nient obſtant que le reverſion demurt. ¶

SO note the diverſity. And ſo it is holden *P.* 21 *E.* 4. But it is adjudged 26. of the book of Aſſiſes, where the ſervices of Tenant in taile were granted, that this was a good grant, notwithſtanding that the Reverſion remain. ¶

¶ This is added to Littleton. And therefore as I have done heretofore, and ſhall do hereafter in like caſes, I paſs it over. And the caſe here cited in 26 Aſſ. p. 66. was contra opinionem multorum, and afterwards that Judgment was reverſed by writ of Error, for that the ſervices remained with the Reverſion as incidents inſeparable.

Sect. 231.

¶ Item ſi ſoit Seignior, meſne & tenant, & le tenant tient del meſne per ſerbice de b. s. & le meſne tient ouſter per ſerbice

ALſo if there be Lord, Meſne and Tenant, and the Tenant holdeth of the Meſne by the ſervice of five ſhillings, and the meſne

¶ *Si ſoit Seignior, Meſne & Tenant &c. Si le Seignior Paramont purchaſe Seigniorie en fee, &c.*

(k) Some have ſaid, that (k) 20 E. 3. avowry 126.

in this caſe it were reaſon, that by the purchaſe of the Lord paramount his Seigniory ſhould be only extinct, and that he ſhould become Tenant to the Meſne, and the Meſne to hold over as the Lord paramount held. But that cannot be, for that one man cannot be both Lord and Tenant, nor one land immediately holden of divers Lords.

2 E. 2. tit. Exting. 6. 26 H. 6. ibid. 7.

(l) If the Tenant infeoff the Lord paramount and his wife and their heirs, in this caſe the Meſnalty is but ſuſpended; for if the wife ſurvive, both Meſnalty and Seigniory are revived.

(l) 7 Aſſ. 2. 7 E. 3. 20.

It is ſaid, that if there be Lord, Meſne, and Tenant, each of them by Fealty and ſix pence, the Lord confirms the eſtate of the Tenant to hold of him by Fealty and three pence, that the Meſnalty is extinct. (m) And ſo in the ſame caſe, if the Tenant be an Abbot, and the Lord confirm his eſtate to hold of him in Frankalmoign, the Meſnalty is extinct. (n) So it is, if the Lord releaſe to the Tenant; for whether the Lord purchaſe the Tenancy, or the Tenant the Seigniory, the Meſnalty is extinct. And albeit the Meſne grant the meſnalty for life, and then the Lord releaſe to the Tenant, both the reverſion and the eſtate for life are drowned. (o) So if there be Lord and Tenant, and the Tenant make a gift in tail, the remainder to the King, the Seigniory is extinct.

(m) 4 E. 3. 19. See for this hereafter in the Chapter of Confirmation, Sect.

(n) 8 H. 6. 24.

(o) 4 & 5 P. & M. Dier 154.

¶ *Que ſerra inconvenient.* Here it appeareth, that Argumentum ab inconvenienti is forcible in Law, as hath been ſaid before, and ſhall be often obſerved hereafter.

Vide Sect. 138, 139.

¶ (p) *Le ley voit pluis toſt ſuffer miſchiefe que inconvenience.* Lex citius tolerare vult privatum damnum, quàm publicum malum. Here be two Maxims of the Common Law.

(p) 13 H. 3. 4. 40 Aſſ. p. 27. 12 R. 2. Vouch. 81.

First, That no man can hold one and the ſame land immediately of two ſeveral Lords.

Secondly, That one man cannot of the ſame land be both Lord and Tenant. And it is to be obſerved, that it is holden for an inconvenience, that any of the maxims of the Law ſhould be broken, though a private man ſuffer loſſe: for that by infringing of a maxim, not only a general prejudice to many, but in the end a publick incertainty and confuſion to all, would follow. And the rule of Law is regularly true, Res inter alios acta alteri nocere non debet. Et factum unius alteri nocere non debet. Which are true with this exception, unleſſe an inconvenience ſhould follow, as our Author here teacheth us.

de xii. d. ſi le Seignior paramount purchaſe le tenancie en fee, donques le ſervice de le meſnaltie eſt extinct, pur ceo que quant le Seignior paramount ad le tenancie, il tient de ſon Seignior prochein paramount a luy; & ſil doit tener ceo de luy que fuit meſne, donques il tiendra un meſme tenancie immediate de divers Seigniors per divers ſervices, que ſeroit inconvenient, & la ley voit plus toſt ſuffer un miſchiefe que un inconvenience; & pur ceo le Seigniory del meſnaltie eſt extinct.

holdeth over by the ſervice of 12. pence, if the Lord paramount purchaſe the tenancie in fee, then the ſervice of the meſnalty is extinct, becauſe that when the Lord paramount hath the tenancy, he holdeth of his Lord next paramount to him; and if he ſhould hold this of him which was Meſne, then he ſhould hold the ſame tenancie immediately of divers Lords by divers Services, which ſhould be inconvenient, and the Law will ſooner ſuffer a miſchief then an inconvenience; and therefore the Seigniory of the meſnalty is extinct.

Sect. 232.

¶ *IL avera le iiii. s. come rent Secke.*

¶ MES entant que le tenant te-

BUT inaſmuch as the Tenant holds nus

nuſt del meſne p. d. s. & le meſn̄ tenuſt forſque per xii. d. iſſint que il avoit pluis en advantage per iiii. s. que il payaſt a ſon Seignior, il avera les dits iiii. s. come Rent ſecke annuelment de le Seignior que purchaſe le Tenancie.

of the Meſne by five ſhillings, and the Meſne holds but by twelve pence, ſo as he hath more in advantage by four ſhillings then he pays to his Lord, he ſhall have the ſaid four ſhillings as a rent Secke yearly of the Lord which purchaſed the Tenancy.

And yet he ſhall diſtrain for it, for ſeeing the fealty is extinct the Law reſerves the diſtreſſe to the Rent; for as it hath been ſaid in the like caſe, ſeeing the fealty is extinct, the diſtreſſe by act in Law may be preſerved. Quia quando lex aliquid alicui concedit, concedere videtur & id ſine quo res ipſa eſſe non poteſt. (r) And therefore if a man maketh a leaſe for life, reſerving a Rent, and bind himſelf in a ſtature, and hath the Rent extended and delivered to him, he ſhall diſtrain for the Rent, becauſe he cometh to it by courſe of Law. (r) 13 H.4. Avowry 237.

(f) But if a Rent ſervice be made a Rent ſeck by the grant of the Lord, the Grantee ſhall not diſtrain for it, for that the diſtreſs remains with the fealty. (f) 28 E.3.93.
(t) If there be Lord, Meſne, and Tenant, and the Meſnalty is a Manor having divers freeholders, and the Lord purchaſe one of the Tenancies, and there is a Rent by ſurpluſage, this Rent albeit it be changed into another nature, (as hath been ſaid) is parcell of the Manor. But yet by purchaſe of part of the land, the whole Rent is extinct, albeit the Law did preſerve it. (t) 31 Aſſ.23. 22 Aſſ.33. 2 H.6.14.

Sect. 233.

¶ ITem ſi home q̄ ad Rent Secke eſt un foits ſeiſie daſcun parcel de le Rent & apres l'Tenant ne voit payer l'rent aderere, ceo eſt ſon remedie, il covient de aler per luy ou per auts, a les terres ou tenements dont l' rent eſt iſſuant, & la demaund les arerages del rent, & ſi le Tenant denia ceo de payer, teſt denier eſt un diſſeiſin de le rent. Auxy ſi le tenant ne ſoit adonq̄s preſt a payer ceo eſt ſi denier que eſt un diſſeiſin de rent. Auxy ſi l' Tenant ne nul auter home ſoit demurrant ſur les terres

ALſo if a man which hath a Rent ſecke be once ſeiſed of any parcel of the Rent, and after the Tenant will not pay the rent behind, this is his remedy, he ought to go by himſelf or by others, to the Lands or Tenements, out of which the rent is iſſuing, and there demand the arrerages of the rent, & if the tenant deny to pay it, this deniall is a diſſeiſin of the rent. Alſo if the tenant be not then ready to pay it, this is a denial, which is a diſſeiſin of the rent. Alſo if the Tenant nor any other man be remaining

¶ *Seiſin*, or Seiſon, is common as well to the Engliſh as to the French, and ſignifies in the Common Law poſſeſſion, whereof ſeiſina, a Latine word is made, and ſeiſire a Verb.

¶ *Daſcun parcell.*

(u) A ſeiſin of parcell is a ſufficient ſeiſin in Law, to have an Aſſiſe of the whole Rent. (u) 5 E.4.2.

Concerning the generall learning of ſeiſins, you may read, Lib.4. Bevils caſe, fol.8. li.5. fol.98. lib.6. fol.57. lib.7. fol.24. 29. lib.9. fol.53. and many authorities of Law there cited, but ſufficient is ſaid here to explain Littleton. T. 18 E.1, coram Rege, Nott. in Theſaur.

¶ *A les Terres, &c.*

(w) For a demand of the Tenant out of the land is not ſufficient: but if there be a houſe and land, a demand on the land is ſufficient, but for a condition broken, it ought to be at the houſe, as hath been ſaid before. (w) 49 E.3,14. b. 14 E.4.4 Pl. Com.71.

¶ *Arere.* This word Arere is to be obſerved, for it is not neceſſary that the grantee of

of the Rent ſhould demand it at the very time when it becometh due, but at any time after it is ſufficient. For this is not like a demand of a Rent upon a condition, becauſe that is penal, and overthroweth the whole ſtate, and (x) therefore the time of Demand muſt be certain, to the end the Leſſee, Donee or Feoffee may be there to pay the Rent: but a demand of a Rent ſeck or Rent charge is but only a formall mean to recover that which is due, (y) and therefore in that caſe it may be demanded after it is behind at any time, whether the Tenant be preſent or no; for remedies for rights are ever favourably extended.

(x) 29 Aſſ. 51. 8 H. 6. 11. Lib. de Entries 79. b.

(y) Mich. 41 E. 3. coram Rege, adjudg. accordingly.

ou les tenements pur payer le rent quaunt il demand les arrerages, ceo eſt un denier en ley, & un diſſeiſin en fait; & de tiels diſſeiſins il poit aver Aſſiſe de Novel diſſeiſin envers le tenant, & recovera le ſeiſin del rent, & ſes arrerages, & ſes damages, & les coſtages d̄ s̄ bꝛ & de s̄ plee, &c. Et ſi apres tiel recovery & execution ewe le rent ſoit auter foits a luy denie, donque il avera un rediſſeiſin, & recovera ſes double damages, &c.

upon the lands or tenements to pay the rent when he demandeth the arrerages, this is a denial in Law, and a diſſeiſin in deed, and of ſuch diſſeiſins he may have an Aſſiſe of *Novel diſſeiſin* againſt the Tenant, and ſhall recover the Seiſin of the rent, & his arrerages, and his damages, & the coſts of his writ & of his Plea, &c. And if after ſuch recovery and execution had the rent be again denied unto him, then he ſhall have a rediſſeiſin, and ſhall recover his double damages, &c.

¶. *Ceo eſt un denier en ley.* For whereſoever there is a lawfull demand of a Rent, and the ſame is not paid, whether the Tenant be preſent or abſent, yet this is a denial in Law. albeit there be no words of denial. It appeareth here that the Demand muſt be made upon the land, and albeit the Tenant or any for him be there, yet muſt the Grantee demand it, becauſe without a demand there can be no denier in Deed, nor any in Law.

Vide Bract. lib. 4. fo. 161, 262. 204.
Britton c. 42, 43, &c. fo. 83. 106. 114, 115. 118.
Mirror c. 2. Sect. 1.
* Fleta li. 4. ca. 1. Bra. ubi ſupra.

¶ *Diſſeiſin.* (z) Diſſeiſina, is a putting out of a man out of ſeiſin; and ever implieth a wrong. But diſpoſſeſſion or ejectment, is a putting out of poſſeſſion, and may be by right or by wrong. * Omnis diſſeiſina eſt tranſgreſſio, ſed non omnis tranſgreſſio eſt diſſeiſina, ſi eo animo forte ingrediatur fundum alienum, non quod ſibi uſurpet tenementum, vel jura, non facit diſſeiſinam, ſed tranſgreſſionem, &c. quærendum eſt à judice quo animo hoc fecerit, &c. And of ancient time a Diſſeiſin was deſined thus. Diſſeiſin eſt un perſonel treſpaſſe de tortious ouſter del ſeiſin.

Mirr. cap. 2. Sect. 15.
Bracton lib. 4. cap. 4.
Britton cap. 44, 45, &c.
Flet. lib. 4. cap. 5. & 2, & 3.

¶ *Aſſiſe de novel diſſeiſin.* Aſſiſa novæ diſſeiſinæ. Aſſiſa properly cometh of the Latine word Aſſideo, which is to aſſociate or ſit together. So as properly Aſſiſe is an aſſociation or ſitting together. And the Writ whereby certain perſons are authoriſed and called together, is called Aſſiſa novæ diſſeiſinæ; ſo as Aſſiſa is but Seſſio, but becauſe Seſſio is but a general word, therefore in this ſenſe Aſſiſa is uſed in law for a particular Seſſion by force of the Writ, de Aſſiſa novæ diſſeiſinæ, & accordingly it was anciently ſaid. Aſſiſe in un caſe neſt auter choſe que des Juſtices, and it is called Aſſiſa novæ diſſeiſinæ, for that the Juſtices Seſſion of Eire before whom theſe Aſſiſes were taken in their proper Counties, did ride their Circuits from 7 years to 7 years; and no diſſeiſin before the Eire, if it were not complained of in the Eire, could be queſtioned after the Eire, and therefore a diſſeiſin committed before the laſt Eire was called an ancient diſſeiſin, and a diſſeiſin after the laſt Eire was called a new diſſeiſin, or Nova diſſeiſina. Aſſiſa alſo ſignifieth a Jury, of their ſitting together, and alſo a Seſſion of Parliament, as Littleton hereafter in this chapter ſheweth.

Mirror cap. 2. Sect. 15.

¶ *Et recovera le ſeiſin del Rent.* Here, and by the (&c.) in the end of this Section, is implied, that our Author intendeth his caſe where the Rent iſſueth out of lands in one County: for if a man be ſeiſed of two acres of land in two ſeveral Counties, and maketh a leaſe of both of them, reſerving two ſhillings Rent, in this caſe, albeit ſeveral Liveries be made at ſeveral times, yet it is but one entire Rent in reſpect of the neceſſity of the caſe, and he ſhall diſtrain in one County for the whole, and make one avowry for the whole. But he ſhall have ſeveral Aſſiſes in confinio Comitatus, and in either County ſhall

make

make his plaint of the whole Rent; but there ſhall be but one Patent to the Juſtices. (a) And this Aſſiſe in confinio comitatus is given by the ſtatute of 7 R.2. c. 10. for no Aſſiſe lay in that caſe at the Common Law, but the party might diſtrain. (b) But for a Common of paſture, of Turbary, of Piſcary, of Eſtovers, and the like, in one County, appendant or appurtenant to land in another County, an Aſſiſe in confinio comitatus did lie at the Common Law: (c) and ſo it is of a Nuſans done in one County to lands lying in another County. The like Aſſiſe did lie at the Common Law.

(a) 10 Aſſ. pl. 4. 18 Aſſ. p.1. & 18 E.3.32. 22 H.6.9,10.
(b) F.N.B. 180. a.
(c) F.N.B. 183. k.

(d) And albeit the Counties do not adjoyn, but there be twenty Counties mean between them, yet the Aſſiſe in confinio comitatus doth lie, and the Juſtices ſhall ſit between the ſaid Counties. (e) And where it is ſaid before of two Counties, the like law it is if the ſame extend into more Counties.

(d) 5 E.4.2.
(e) F.N.B. 180. a.

(f) If a man hold divers Mannors or lands in divers ſeveral Counties by one Tenure, and the Lord is deforced of his ſervices, he ſhall have ſeveral Writs of Cuſtoms and ſervices; for every County one Writ returnable at one day in the Court of Common Pleas, and thereupon count according to his caſe by the Common Law.

(f) 30 E.1. tit. Droit. F.N.B. 151. m.

(g) But if the Tenant in that caſe do ceaſe, the Lord ſhall not have ſeveral Writs of Ceſſavit ut ſupra, for the Writ of Ceſſavit is given by the Statute, * and the form and manner of the Writ therein preſcribed; and thereupon it is holden in our Books, that in that caſe a Ceſſavit doth not lie.

(g) 18 Aſſ. pl.1.
* W.2. cap.21.

(h) *Il avera un rediſſeiſin & recovera ſes double damages, &c.* Here by this (&c.) is alſo to be underſtood, that a Writ of Rediſſeiſin is given by the Statute of Merton * (ſo called, becauſe the Parliament was holden at Merton in Anno 20 H. 3. the Letter whereof is, Item ſi quis fuerit diſſeiſitus de libero tenemento, & coram Juſticiariis itinerantibus ſeiſinam ſuam recuperaverit per Aſſiſam novæ diſſeiſinæ, vel per recognition eorum qui fecerint diſſeiſinam, & ipſe diſſeiſitus, per vicecomitem ſeiſinam ſuam habuerit, ſi iidem diſſeiſitores poſtea poſt iter Juſticiariorum vel infra de eodem tenemento iterum eundem conquerentem diſſeiſiverint, & inde convicti fuerint, ſtatim capiantur, &c. But the double damages are given by the Statute of W. 2. cap. 26.

(h) Bract. fol.216. Britton 133. 246. Fleta lib.4. cap.29. Merton cap.2. Sect.15. Regiſt.206,207.
* Mirror c2.3. W.2. c.46.
Vide Sect. 294.
Vide Regiſt. 206. b.

And Littleton in few words hath made a good expoſition of this ſtatute: for where the Statute ſaith, Diſſeiſitus de libero tenemento, Littleton expounds it (i) to extend to a Rent ſecke or Rent charge, albeit as hath been ſaid, they be againſt common right, yet a man hath a freehold in them. (k) And he that granteth Omnia tenementa ſua, a Rent charge or a Rent ſecke doth paſſe.

(i) 40 Aſſ.23.20.
(k) 14 E.4.4. 11 H.6.22.

Coram Juſticiariis itinerantibus, &c. ſaith the Statute. But Littleton ſpeaketh generally, and ſo is the ſtatute to be intended before any other Juſtices that have authority to take Aſſiſes, and Juſtices Itinerant are ſet down but for an example, which is worthy of the obſervation, (l) being a penal law.

(l) F.N.B. 189. b.

Recuperaverit per aſſiſam, &c. ſaith the ſtatute: here aſſiſa is taken for the verdict of the Aſſiſe, as Littleton hereafter in this chapter expoundeth the ſame, Vel per recognitionem, &c. or by confeſſion. Then the queſtion is, what if the recovery were upon a demurrer, or by pleading of a Record and faiter of it, or by any other manner? And ſeing Littleton ſpeaketh generally, it muſt be underſtood of all manner of recoveries in an Aſſiſe of Novel diſſeiſin, and ſo it is confirmed by the Statute of W.2. cap. 26.

¶ *Recovery.* Recuperatio cometh of the Verb Recuperare, i. ad rem per injuriam extortam ſive detentam per ſententiam Judicis reſtitutio. And Recuperatio in the common Law, is all one with Evictio in the Civil Law, which is, alicujus rei in cauſam alterius adductæ per judicem acquiſitio.

¶ *Et execution ewe,* Per vicecomitem ſeiſinam habuerit, ſaith the Statute, but Littleton ſpeaketh generally, (Et Execution ewe) And execution had, ſo as whether it be by the Sheriff or by the party, ſo as an execution or poſſeſſion be had, it ſufficeth.

¶ *Execution.* Executio. And ſignifieth in Law, the obtaining of actual poſſeſſion of any thing acquired by judgement of Law, or by a fine executory levied, whether it be by the Sheriff or by the entry of the party, whereof you ſhall read more hereafter.

Vide Sect.504.

Note, it appeareth here by Littleton, That (m) the recovery in a former Writ muſt be in Aſſiſe of Novel diſſeiſin, wherein theſe words (Tiel recovery) are to be obſerved. And therefore if in a Writ of Right cloſe in ancient Demeſne, the Demandant maketh his proteſtation, to ſue in the nature of Aſſiſe of Novel diſſeiſin, and after is re-diſſeiſed, he ſhall not have a Writ of Re-diſſeiſin, becauſe the firſt recovery was not by Writ of Aſſiſe of Novel diſſeiſin. (n) And ſo it is if the recovery were in Aſſiſe of Freſh force by Bill, according to the Cuſtom of ſome City or Borough, alſo in ancient Demeſne there be no Coroners.

(m) 14 E.2. tit. Rediſſ. 9. F.N.B. 189. g.
(n) 14 E.3. tit. Rediſſ.8. Vide the 2. part of the Inſtitutes Stat. de Merton cap.3.
(o) 9 H.4,5. F.N.B.189. c. 25 Aſſ. pl.7.

Si iidem diſſeiſitores, ſaith the Statute: (o) ſo as it muſt be the ſame Diſſeiſors: but here Idem

Iidem is taken for non alii. And therefore if the recovery in the Aſſiſe were againſt two Diſſeiſors, and one of them re-diſſeiſe him again, he ſhall have a re-diſſeiſin againſt him, for he is not alius, But if the recovery had been againſt one, and he and other re-diſſeiſe the plaintiff, he ſhall not have a Re-diſſeiſin, for here is alius; and he cannot have a re-diſſeiſin againſt the former Diſſeiſor alone, becauſe he is Joyntenant with another. (p) For Joyntenancy in a Writ of re-diſſeiſin is a good plea; and a ſtranger ſhall not be ſubject to double impriſonment and double damages.

(p) 33 E.3. Rediſſeiſin 7.

(q) If a recovery be had againſt a woman in Aſſiſe of Novel Diſſeiſin, and the plaintiff recovereth and hath execution, the woman taketh husband, and both of them re-diſſeiſe the Plaintiff, he ſhall not have a Re-diſſeiſin, becauſe the husband is alius. (r) And yet if a Feme recover in an Aſſiſe, and after take Baron, and they are re-diſſeiſed, the husband and wife ſhall have a re-diſſeiſin, becauſe the husband joyneth for conformity, and it is in the right of his wife who was diſſeiſed before, ſo in effect it is, idem diſſeiſitus & idem conquerens.

(q) 9 H.4.5. F.N.B.188.E.

(r) F.N.B. 188. E. Regiſt. 9 H.4.3.

If two Coparceners be diſſeiſed, and recover in an Aſſiſe, if after they make partition, and after they be ſeverally diſſeiſed, they ſhall have ſeveral re-diſſeiſins; and ſo it is of Joyntenants, for they be Iidem conquerentes & non alii. Alſo a re-diſſeiſin doth lie againſt the Diſſeiſor, which doth re-diſſeiſe, and againſt another to whom he made feoffment after the ſecond diſſeiſin, for otherwiſe the Re-diſſeiſor might prevent the Plaintiff of his re-diſſeiſin. But in an Aſſiſe againſt A. and B. A. is found Diſſeiſor, and B. Tenant, and the Plaintiff doth recover, and after he which was found Tenant diſſeiſes the Plaintiff, he ſhall not have a re-diſſeiſin, becauſe he did diſſeiſe him but once.

F. N. B. 183. G. De eodem tenemento, ſaith the ſtatute. If the Plaintiff be re-diſſeiſed of parcel of the tenement formerly recovered, he ſhall have a re-diſſeiſin.

If the Meſne recovereth a Rent when it is a Rent ſervice, and after the Rent becometh a Rent Seck by ſurpluſage, and doth re-diſſeiſe him of the Rent, he ſhall have a re-diſſeiſin, for the ſubſtance of the Rent remains, though the quality be altered.

(ſ) 26 H.6. tit. Aid.77. (ſ) If Tenant in ſpeciall tail, recovereth in Aſſiſe and after becometh Tenant in tail, after poſſibility of iſſue extinct, and then is re-diſſeiſed, he ſhall have a re-diſſeiſin. For albeit the ſtate of Inheritance be altered, yet the ſame freehold remaineth.

; E.3. tit. Rediſſeiſin 6. F. N. B. 189. F. If a man recover Land in an Aſſiſe of Novel diſſeiſin, whereunto there is Common appendant or appurtenant, and after is re-diſſeiſed of the common, he ſhall have a re-diſſeiſin of the common, for it was tacitely recovered in the Aſſiſe.

Sect. 234.

¶ Æ *Quivocum.* For the better underſtanding hereof, of theſe there be two kinds, viz. Æquivocum Æquivocans; and Æquivocum Æquivocatum.

Æquivocum Æquivocans eſt plurivocum; Polyſemus, a word of divers ſeverall ſignifications.

Æquivocum Æquivocatum eſt univocum, that is to ſay, reduced to a certain ſignification, as here in Littletons example, Aſſiſa eſt nomen æquivocum æquivocans; for ſometime it ſignifieth a Jury, ſometime the Writ of Aſſiſe, and ſometime an Ordinance or Statute.

Now Aſſiſe, Jurata, is Æquivocum æquivocatum, and ſo is Breve de Aſſiſa novæ diſſeiſine, and Aſſiſa panis, &c. even as Canis eſt nomen æ-

¶ ET memorandum, que ceſt noſme Aſſiſe, eſt nomen æquivocum, car aſcun foits eſt priſe pur un Jurie, car le commencement de le Record de Aſſiſe de nobel diſſeiſin iſſint commencera: Aſſiſa venit recognitura, &c. quod idem eſt quod Jurata venit recognitura, &c. Et la cauſe eſt, pur ceo que per le briefe de Aſſiſe il eſt command a la Vicont, Quod faceret

And *memorandum*, that this name Aſſiſe, is *nomen Equivocum*, for ſometimes it is taken for a Jury; for the beginning of the Record of an Aſſiſe of *Novel diſſeiſin* beginneth thus, *Aſſiſa venit recognitura, &c.* which is the ſame as *Jurata venit recognitura*. And the reaſon is, for that by the Writ of aſſiſe it is commanded to the Sheriff, *Quod faceret duodecem liberos & legales homi-*

duodecem

duodecim liberos & legales homines de vicineto, &c. videre tenementum illud, & nomina illorum imbreviare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Juſticiariis, &c. parati inde facere recognitionem, &c. Et pur ceo que per tiel original un panel per force de meſme le briefe deboit eſtre returne, &c. il eſt dit en l' commencement del Record en le Aſſiſe, Aſſiſa venit recognitura, &c. Auxy en briefe de droit il eſt communement dit, que le tenant luy poit mitter en Dieu & grand Aſſiſe, &c. Auxy il y ad un briefe en le Regiſter que eſt appel briefe De magna Aſſiſa eligenda. Iſſint eſt ceo bien prove, que ceſt noſme Aſſiſe aliquando ponitur pro Jurat'. & alcun foits il eſt priſe pur tout le briefe daſſiſe: & ſolonque cel entent il eſt pluis proprement & pluis communement priſe, ſicome Aſſiſe de Novel Diſſeiſin eſt priſe pur tout l' breve de Aſſiſe de Novel diſſeiſin. Et en meſme le manner, Aſſiſe de *nes de vicineto, &c. videre tenementum illud, & nomina illorum imbreviare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Juſticiariis, &c. parati inde facere recognitionem, &c.* And becauſe that by ſuch an original a Pannel by force of the ſame Writ ought to be returned, &c. it is ſaid in the beginning of the Record in the Aſſiſe, *Aſſiſa venit recognitura, &c.* Alſo in a writ of Right it is commonly ſaid, that the Tenant may put himſelf on God and the great Aſſiſe. Alſo there is a Writ in the Regiſter which is called a Writ *De magna Aſſiſa eligenda.* So as this is well proved, that this name *Aſſiſa* ſometimes is taken for a Jury, and ſometimes it is taken for the whole writ of Aſſiſe: and according to this purpoſe it is moſt properly and moſt commonly taken, as an Aſſiſe of *Novel diſſeiſin* is taken for the whole writ of Aſſiſe of *Novel diſſeiſin.* And in the ſame manner, an Aſſiſe of Common of Paſture is taken for the whole Writ of Aſſiſe

quivocum; Canis latrabilis, Canis marinus, Canis cœleſtis, ſunt æquivoca æquivocata.

¶ *Aſſiſe de Novel diſſeiſin.* Note (a) there be four Aſſiſes, viz. this writ, an Aſſiſe of Mordanceſtor, of Darreine preſentment, and of Utrum. (a) Bracton lib. 4. fo. 160. Britton c. 42. fo. 105. 134. F.N.B. Fleta lib. 4. c. 2. 5. &c. Mirror c. 2. Sect. 15.

¶ *Vicount.* Vide Sect. 248. Verbo (*Shireve.*)

¶ *Quod faciat* 12. *liberos & legales homines de Vicineto, &c.* (b) Albeit the words of the writ be duodecim, yet by ancient courſe the Sheriff muſt return 24. and this is for expedition of Juſtice: for if 12. ſhould only be returned, no man ſhould have a full Jury appear, or be ſworn in reſpect of challenges, without a Tales, which ſhould be a great delay of trials. So in this caſe uſage and ancient courſe maketh Law. And it ſeemeth to me, that the Law in this caſe delighteth her ſelf in the number of 12. for there muſt not only be 12. Jurors for the trial of matters of fact, (c) but 12. Judges of ancient time for trial of matters in Law in the Exchequer Chamber. Alſo for matters of State there were in ancient time twelve Counſellors of State. He that wageth his Law muſt have eleven others with him which think he ſays true. And that number of twelve is much reſpected in Holy Writ, as, twelve Apoſtles, twelve Stones, twelve Tribes, &c. (b) 1 H. 7. 2. (c) Vid Pl. Com. in proœmio. Joſ. 4. Gen. 49.

(d) He that is of a Jury muſt be liber homo, that is, not only a freeman, and not bond, but alſo one that hath ſuch freedome of mind, as he ſtands indifferent as he ſtands unſworn. Secondly, he muſt be legalis. And by the Law every Juror that is returned for the trial of any iſſue or cauſe ought to have three properties. (d) 9 E. 4. 16.

(*) Firſt,

common de paſture eſt prize pur tout le briefe daſſiſe de common de paſture, & Aſſiſe de mortdanceſtor eſt prize pur tout le bre daſſiſe de Mortdanceſtor, & Aſſiſe de darraine preſentment eſt prize pur tout le breve daſſiſe de darraine preſentment. Mes il ſemble que le cauſe pur q̄ tiels briefes al commencement fueront appels Aſſiſes, fuit pur ceo que p chelcun tiel briefe il eſt commande al bilcont, Qd' ſummoneat xii. le quel eſt a tant adir̄, que doit ſummoner un Jurie. Et alcun foits aſſiſe eſt prize pur un ordinãce, ſ. pur mitter certeine choſes en certeine rule & diſpoſition, ſi come ordinance que eſt appel Aſſiſa panis & ceruiſiæ.

of Common of Paſture, and Aſſiſe of *Mortdanceſtor* is taken for the whole Writ of Aſſiſe of *Mortdanceſtor*, and Aſſiſe of *Dareine preſentment* is taken for the whole Writ of *Dareine preſentment*. But it ſeems that the reaſon why ſuch writs at the beginning were called Aſſiſes, was, for that by every ſuch writ it is commanded to the Sheriff, *Quod ſummoneat* 12. which is as much to ſay, that he ought to ſummon a Jury. And ſometime Aſſiſe is taken for an ordinance, to wit, to put certain things into a certain rule and diſpoſition, as an Ordinance which is called *Aſſiſa panis & Cervitiæ.*

Artic. ſuper Cart. c. 9. Regiſt. 178. 8 E. 3. 30.

First, he ought to be dwelling moſt near to the place where the queſtion is moved.

Secondly, he ought to be moſt ſufficient, both for underſtanding, and competency of eſtate.

Thirdly, he ought to be leaſt ſuſpitious, that is, to be indifferent, as he ſtands unſworn, and then he is accounted in Law Liber & legalis homo; otherwiſe he may be challenged, and not ſuffered to be ſworn. The moſt uſual tryal of matters of fact is by twelve ſuch men, for ad queſtionem facti non reſpondent Judices. And matters in Law, the Judges ought to decide and diſcuſſe; for Ad queſtionem juris non reſpondent juratores.

Vide Sect. 102. 193.

9 H. 6. 37.

(e) Vid. Artic. ſup. Car. c. 9. Forteſc. c. 25. &c. 29.

(e) For the inſtitution and right uſe of this trial by twelve men, and wherefore other Countries have them not, and how this trial excels others, ſee Forteſcue at large, c. 25. &c. & 29. (f) And in antient time they were twelve Knights. This trial of the fact Per duodecem liberos & legales homines is very ancient. For hear what the Law was before the Conqueſt: (g) In ſingulis Centuriis comitia ſunto, atque liberæ conditionis viri duodeni, ætate ſuperiores unà, cum præpoſito ſacra tenentes juranto, &c. May the trial in ſome caſes, Per medietatem linguæ, (as we ſpeak) was as ancient, (h) viri duodeni jure conſulti, Angliæ ſex, Walliæ totidem, Anglis & Wallis jus dicunto, and of antient time it was called duodecem-virale judicium.

(f) Glanvil lib. 1. cap. 14, 15. Bracton li. 3. fo. 116. 2.

(g) Lamb. verb. Centuria.

(h) Lamb. fol. 91. 3.

Now ſeeing we are juſtly occaſioned, and the rather for the (&c.) herein, to ſpeak of a challenge to Jurors: to make the ſtudious Reader capable of the underſtanding of the Books of Law concerning this matter, it ſhall be neceſſary to ſay ſomewhat of Challenges; and firſt what a Challenge is.

Challenge is a word common, as well to the Engliſh as to the French, and ſometime ſignifieth to claim, and the Latine word is vendicare, ſometime in reſpect of revenge to challenge into the field, and then it is called in Latine vindicare or provocare. Sometime in reſpect of partiality or inſufficiency, to challenge in Court perſons returned on a Jury. And ſeeing there is no proper Latin word to ſignifie this particular kind of challenge, they have framed a word anciently written (a) Chalumniare, and Columpniare, and Calumpniare, and now written Calumniare, and hath no affinity with the verb Calumnior, or Calumnia, which is derived of that, for that is of a quite other ſenſe, ſignifying a falſe accuſer, and in that ſenſe (b) Bracton uſeth Calumniator to be a falſe accuſer: but it is derived of the old word Caloir or Chaloir, which in one ſignification is to care for, or forefend. And for that to challenge Jurors is the mean to care for or forefend that an indifferent trial be had, it is called calumniare, to challenge, that is, to except againſt them that are returned to be Jurors; and this is his proper ſignification. (c) But ſometimes a Summons, Summonitio, is ſaid (d) to be calumniata, and a Count to be challenged;

(a) W. 2. cap. 32. Vide Stat. de 12 E. 2. de eſſon. calumniand. Fleta lib. 1. cap. 32. Britton fo. 6. 2. 12. 2. 118. & 134. 12 Aſſ. 10.
(b) Bract. lib. 3. fol. 137.
(c) Bract. lib. 4. fol. 257. Vet. N. B. fol. 79.

lenged; but this is improperly. And forasmuch as mens Lives, Fames, Lands and Goods are to be tried by Jurors, it is most necessary that they be Omni exceptione majores; and therefore I will handle this matter the more largely.

A challenge to Jurors is two-fold, either to the Array, or to the Polls: to the Array of the principal pannel, and to the array of the Tales. and herein you shall understand, that the Jurors names are ranked in the pannel one under another, which order or ranking the Jury is called the array, and the Verb to array the Jury; and so we say in common speech, Battaile array, for the order of battail. And this array we do call Arraiamentum, and to make the array, Arraiare, derived of the French word Araier: so as to challenge the array of the Pannel, is at once to challenge or except against all the persons so arrayed or impannelled, in respect of the partiality or default of the Sheriff, Coroner, or other officer that made the return.

And it is to be known that there is a principal cause of challenge to the Array, and a challenge to the favour. Principal, in respect of partiality: as first, if the Sheriff or other Officers be of (a) a kindred or affinity to the Plaintiff or Defendant, if the affinity continue, (b) Secondly, If any one or more of the Jury be returned at the denomination of the party Plaintiff or Defendant, the whole array shall be quashed. So it is if the Sheriff return any one, that he be more favourable to the one then the other, all the array shall be quashed. (c) Thirdly if the Plaintiff or Defendant have an action of battery against the Sheriff, or the Sheriff against either party, this is a good cause of challenge. So if the Plaintiff or Defendant have an action of debt against the Sheriff, (but otherwise it is, if the Sheriff have an action of debt against either party;) or if the Sheriff have parcel of the land depending upon the same title; (d) or if the Sheriff or his Bailiff which returned the Jury be under the distress of either party; or if the Sheriff or his Baylife be either of Counsel, Attorney Officer in Fee, or of Robes, or servant to either party, Gossip or Arbitrator in the same matter, and treated thereof. (e) And where a subject may challenge the array for indifferency, there the King being a party may also challenge for the same cause, as for Kindred, or that he hath part of the land, or the like. And where the array shall be challenged against the King, you shall read in our Books.

(f) By default of the Sheriff, as when the array of a Pannel is returned by a Bailiff of a Franchise, and the Sheriff return it as of himself, this shall be quashed, because the party should lose his challenges. But if the Sheriff return a Jury within a Liberty, this is good and the Lord of the Franchise is driven to his remedy against him.

If a Peer of the Realm or Lord of Parliament be Demandant or Plaintiff, Tenant or Defendant, there must a Knight be returned of his Jury, be he Lord Spiritual or Temporal, or else the array may be quashed: but if he be returned, although he appear not, yet the Jury may be taken of the residue. And if others be joyned with the Lord of Parliament, yet if there be no Knight returned, that array shall be quashed against all. (h) So in an attaint there ought to be a Knight returned of the Jury.

(i) And when the King is party, as in travers of an office, he that traverseth may challenge the array, as hereafter in this Section shall appear. and so it is in case of life: and likewise the King may challenge the array, and this shall be tried by Triors, according to the usual course. (k) The array challenged on both sides shall be quashed.

(l) And if two estrangers make a Pannel, and not in favourable manner for the one party as the other, and the Sheriff returns the same, the array was challenged for this cause, and adjudged good.

(m) If the Bailiff of a Liberty return any out of his Franchise, the array shall be quashed, as an array returned by one that hath no Franchise shall be quashed.

Challenge to the array for favour: (n) he that taketh this, must shew in certain the name of him that made it, and in whose time, and all in certainty: This kind of Challenge, being no principal Challenge, must be left to the discretion and conscience of the Triors. As if the Plaintiff or Defendant be tenant to the Sheriff, this is no principal Challenge, for the Lord is in no danger of his Tenant, but è converso it is a principal Challenge, but in the other he may challenge for favour, and leave it to trial. So affinity between the son of the Sheriff and the daughter of the party, or è converso, or the like, is no principal Challenge, but to the favour: but if the Sheriff marry the daughter of either party: or è converso, this (as hath been said) is a principal challenge, or the like. (o) But where the King is party, one shall not challenge the array for favour, &c. because in respect of his allegiance he ought to favour the King more. But if the Sheriff be a Vadelet of the Crown, or other menial servant of the King, there the challenge is good; and likewise the king may challenge the array for favour.

Note upon that which hath been said it appeareth, that the challenge to the array is in respect of the cause of unindifferency or default of the Sheriff or other Officer that made the return,

(a) 12 Ass. 36 26 Ass. 31.
3 E. 4. 12. 13 Ass. 7. 29 Ass. 2.
22 E. 4. 2. 12. E. 3. Chall. 114.
21 E. 3. 5. b. 3 H. 7. 5.
Pl. Com. 73. 15. H. 7. 9.
7 E. 6. Dier 78.
12 H. 6. Chall. 159.
(b) 21 E. 4. 74. 49 E. 3. 1.
15 E. 3. 43. 22 E. 3. 12.
9 E. 4. 46. 8 H. 5. 5. 28 Ass. 22.
41 E. 3. Chall. 99.
(c) 11 H. 4. 26. 22 E. 4. 1.
38 E. 3. 25. 38 H. 6. 6.
(d) 44 E. 3. 5. & 38.
44 Ass. 23. 22 E. 4. 1.
3 H. 6. 39. 15 H. 7. 9. b.
27 Ass. 28. 7 H. 7. 10.
26 Ass. 56. 22. 20 H. 6. 34.
33 Ass. 12. 45 Ass. 1.
9 Ass. 8. 8 Ass. 23. 7 E. 3. 56.
21 H. 7. 38. 2 H. 4. 13.
44 E. 3. 43. 20 H. 6. 39.
44 Ass. 18. 3 H. 6. 24.
17 E. 2. Chall. 168. 4. E. 4. 11.
(e) 4 H. 7. 44 E. 3. 38.
38 Ass. 19. 22 E. 4. Chall.
63 Stamf. 162. c.
(f) 39 Ass. 2. 17 E. 3. 50.
17 Ass. 11. 30 Ass. 5. 8 Ass. 3.
(g) 13 E. Chall. 115. Br. Inquest 10. Lib. 6. fol. 54. Countesse de Rutlands case. Pl. Com. 117. 27 H. 8. 22. 4 El. Dier 208. 8 El. Dier 246. 14 Eliz. Dier 318. 10 Eliz. Dier 265. b.
(h) 17 E. 2. Attaint 69.
(i) 32 E. 4. tit. Chall. 63. Stamf. Pl. cor. 19. Ass. 6. b. 4 H. 7. 8. 44 E. 3. 38.
(k) 8 H. 4. 22.
(l) 6 R. 2. Chall. 102. 13 E. 3. ibid. 108.
(m) 32 E. 3. Chall. 110, 111. 32 Ass. 6. 38 Ass. 13.
(n) 34 H. 6. Chall. 69. 8 H. 4. 22. 27 Ass. 20. 22 E. 3. 12. Vid. 26 Ass. 21. 38 H. 6. 9. 7 H. 6. 25. 19 H. 6. 48. 20. H. 6. 38. 20 E. 4. 2. 22 E. 4. Chall. 62.
(o) 22 E. 4. Chall. 63. 4 H. 7. 8.

return, and not in reſpect of the perſons returned, where there is no indifferency or default in the Sheriff, &c for if the challenge to the Array be found againſt the party that takes it, yet he ſhall have his particular challenge to the Polls.

In ſome caſes a challenge may be had to the Polls, and in ſome caſes not at all. Challenge to the Polls is a challenge to the particular perſons: and theſe be of four kinds; that is to ſay, Peremptory, Principal, which induce Favour, and for default of Hundreders.

(p) 1 H.5.Chal.162. 9 H.5.7. 15 E.4.32. 14 H.7.7.19.Doct. & Stud.lib.2. Forteſc. cap.27. 3 H.7.2. 2 R.3.13. 32 H.6.26. 17 Aſſ.6. 37 H.6.8. 22 H.8. c.14.33 H.8.tit.Chall. Br. 217. 33 H. 8. c. 23. 1 & 2 P.& M.c.10. 32 H 6.26. 14 H.7.14. Stanf.Pl. Cor.137, 138.

* Hill. 1. Ja. B.

(p) Peremptory, this is ſo called, becauſe he may challenge peremptorily upon his own diſlike, without ſhewing of any cauſe; and this only is in caſe of Treaſon or Felony, in favorem vitæ. And by the Common Law the priſoner upon an Endictment or Appeal might challenge thirty five, which was under the number of three Juries: but now by the Statute of 22. H.8. the number is reduced to twenty in petty Treaſon, Murder, and Felony; and in caſe of high Treaſon and Miſpriſion of high Treaſon it was taken away by the Statute of 38 H.8. But now by the Statute of 1 & 2 Phil. & Mariæ, the Common Law is revived, for any Treaſon the priſoner ſhall have his Challenge to the number of 35. and ſo it hath been reſolved * by the Juſtices, upon conference between them in the caſes of Sir Walter Raleigh, and George Brooks. But all this is to be underſtood, when any ſubject that is not a Peer of the Realm is arraigned for Treaſon or Felony: But if he be a Lord of Parliament, and a Peer of the Realm, and is to be tried by his Peers, he ſhall not challenge any of his Peers at all, for they are not ſworn as other Jurors be, but find the party guilty or not guilty upon their faith or allegiance to the King, and they are Judges of the fact, and every of them doth ſeparably give his Judgment, beginning at the loweſt. But a ſubject under the degree of Nobility may in caſe of Treaſon or Felony challenge for juſt cauſe as many as he can, as ſhall be ſaid hereafter. In an Appeal of death againſt divers, they plead not guilty, and one joynt Venire facias is awarded; if one challenge peremptorily, he ſhall be drawn againſt all. Otherwiſe it is of ſeveral Venire fac.

9 E.4.27.

Note, that at the Common Law before the Statute of 33 E. 1. the King might have challenged peremptorily without ſhewing cauſe, but only that they were not good for the King, and without being limited to any number: but this was miſchievous to the ſubject, tending to infinite delayes and danger. And therefore it is enacted, (q) Quod de cætero, licet pro Domino Rege dicatur quod juratores, &c. non ſunt boni pro Rege, non propter hoc remaneant inquiſitiones, &c. ſed aſſignent certam cauſam calumniæ ſuæ, &c whereby the King is now reſtrained.

(q) 33 E.1. Ordinatio de Inquitionibus.Stanf.Pl.Cor.162.

Principal, ſo called, becauſe if it be found true, it ſtandeth ſufficient of it ſelf without leading any thing to the conſcience or diſcretion of the Triors. Of a principal cauſe of challenge to the Array we have ſaid ſomewhat already; now it followeth with like brevity to ſpeak of principal Challenges to the Polls, (that is) ſeverally to the perſons returned.

Principal challenges to the Poll may be reduced to four heads. Firſt, Propter Honoris reſpectum, For reſpect of Honour: Secondly Propter Defectum for want or default: Thirdly, Propter Affectum, For Affection or partiality: Fourthly, Propter Delictum, For Crime or Delict.

Lib.6.f. 52,53. Counteſſe de Rutlands caſe. 48 E.3.30. 48 Aſſ.6. 35 H.H.6. 46. 22 Aſſ.24. F.N.B. 165. d. & 166. Regiſt.179.

First, Propter Honoris reſpectum. As any Peer of the Realm or Lord of Parliament, as a Baron, Viſcount, Earl, Marqueſſe, and Duke; for theſe, in reſpect of Honour and Nobility, are not to be ſworn on Juries; and if neither party will challenge him, he may challenge himſelf; for by Magna Charta it is provided, Quod nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, aut per legem terræ. Now the Common Law hath divided all the ſubjects into Lords of Parliament, and into the Commons of the Realm. The Peers of the Realm are divided into Barons, Viſcounts, Earls, Marqueſſes, and Dukes. The Commons are divided into Knights, Eſquires, Gentlemen, Citizens, Yeomen, and Burgeſſes. And in judgment of Law any of the ſaid degrees of Nobility are Peers to another. As if an Earle, Marques, or Duke be to be tried for Treaſon or Felony, a Baron or any other degree of Nobility is his Peer. In like manner, a Knight, Eſquire, &c. ſhall be tried per Pares, and that is by any of the Commons, as Gentlemen, Citizens, Yeomen, or Burgeſſes. So as when any of the Commons, is to have a trial either at the Kings ſuit, or between party and party, a Peer of the Realm ſhall not be impannelled in any caſe.

(a) Lib.7.fo.18. Calvins caſe. Lib.10.fol.104. 14 H.4.19.b. (b) Bract.fo.185. Brit.fo.135. Flet.lib.4.ca.8. 26 Aſſ. 28. 3 H.6.36. 9 E.4. 16. b. 21 H.6.20. 10 H.7.20. (c) Vid.Sect.464.38 Aſſ.10. 17 Aſſ.15. 4 H.6.28. 9 H.5. 5. 10 H.6,7,8.18. 2 H.7.1. 20 H.7.14. 19 H.6.9. 7 H.6.25.40.44. 12 E.4.13. 3 H.4.4.

* 9 H.6.Chall.27. 9 H.7.1.

Secondly, Propter Defectum.

1. Patriæ; (a) as Aliens born,

2. Libertatis; (b) as Villeins or Bondmen; and ſo a Champion muſt be a Freeman.

3. Annui cenſus, i. Liberi tenementi. (c) First, what yearly freehold a Juror ought to have that paſſeth upon trial of the life of a man, or in a plea real, or in a plea perſonal, where the debt or damage in the Declaration amounteth to forty Marks, Vide Sect. 464. * Secondly, this freehold muſt be in his own right, in fee ſimple, fee tail, for term of his own life, or for another mans life, although it be upon condition, or in the right of his wife out of ancient demeſne; for freehold within ancient demeſne will not ſerve: but if the debt or damage amounteth

mounteth not to forty Marks, any Freehold sufficeth. (d) Thirdly, he must have Freehold in that County where the cause of the Action ariseth; and though he hath in another, it sufficeth not. (e) Fourthly, if after his return he selleth away his land, or if Cestuy que vie, or his wife dieth, or any entry be made for the condition broken, so as his Freehold be determined, he may be challenged for insufficiency of Freehold.

4. Hundredorum. First, by the Common Law in a plea real, mixt and personal, there ought to be four of the Hundred (where the cause of Action ariseth) returned for their better notice of the cause, for Vicini vicinorum facta præsumuntur scire. But now since Littleton wrote, (f) in a plea personal, if two Hundredors appear, it sufficeth; and in an attaint, (g) although the Jury is double, yet the Hundredors are not double. Secondly, (h) if he hath either Freehold in the Hundred, though it be to the value but of half an acre; or if he dwell there, though he hath no Freehold in it, it sufficeth. (i) Thirdly, if the cause of the Action riseth in divers Hundreds; yet the number shall suffice, as if it had come out of one, and not several Hundredors out of each hundred. (k) Fourthly, if there be divers hundreds within one Leet or Rape, if he hath any Freehold, or dwell in any of those Hundreds, though not in the proper hundred, it sufficeth. (l) Fifthly, if the Jury come de corpore Comitatus, or de proximo hundredo, where the one party is Lord of the hundred, or the like, there need no Hundredors be returned at all. (m) Sixthly, if a hundredor after he be returned, sell away his Land within that hundred; yet shall he not be challenged for the Hundred, for that this notice remains, otherwise as hath been said for his insufficiency of Freehold, for his fear to attend, and to have lands wasted, &c. which is one of the reasons of Law, is taken away. (n) Seventhly, he that challengeth for the hundred must shew in what hundred it is, and not make the other party to shew it. Eighthly, his challenge for the hundred is not simpliciter, but secundum quid; for though it be found that he hath nothing in the Hundred, yet shall not he be drawn, but remain præter H. that is, besides for the Hundred; and albeit he dwelleth or have Land in the Hundred, yet must he have sufficient Freehold.

(d) 19 H.6.9. 17 Ass.15.
(e) 12 H.7.4. 21 H.6.38. 7 H.4.1.
(f) 27 Hen.c.29.
(g) 7 E.4.47.
(h) 16 E.3.1.4 Mar. Br. Chal.218. 22 E.4.74.83. 9 H.6.66.
(i) 20 H.6.23. 4 Mar. Br. Chall.218.
(k) 10 H.6.3. 12 H.4.24. 19 E.4.5.
(l) 37 H.6.21. 23 E.3.43.
(m) 21 H.6.38. 12 H.7.4.
(n) 7 Eliz. Dier 231.

3. Propter affectum: And this is of two sorts, either working a Principal challenge, or to the favour. And again, a Principal challenge is of two sorts, either by judgment of Law without any Act of his, or by judgment of Law upon his own Act.

And it is said, that a Principal challenge is, when there is express favour or expresse malice. First, without any Act of his, as if the Juror be (a) of blood or kindred to either party, Consanguineus, which is compounded ex Con & sanguine, quasi eod. in sanguine natus, as it were issued from the same blood, and this is a Principal challenge, for that the Law presumeth, that one Kinsman doth favour another before a stranger, (b) and how far remote soever he is of kindred yet the challenge is good. And if the Plaintiff challenge the Juror for kindred to the Defendant, it is not no Counterplea to say that he is of kindred also to the Plaintiff though he be in a nearer degree. For the words of the Venire facias forbiddeth the Juror to be of kindred to either party.

Bract. fol.185.
Britton fol.134, 135.
Fleta lib.4. cap.8.
21 E.4.21,22.
(a) Britton fol.135.
(b) Mirror cap.3. de ordinance de traitz.
Bracton, Britton, Fleta } ubi supra.
14 El. Dier 310. 21 E.3.75. 40 Ass. 29 Pl. Com. fol. 41 E.3. Chall.99. 21 E.4.75.

(c) If a body politick or incorporate, sole or aggregate of many, bring any Action that concerns their body politick or incorporate, if the Juror be of kindred to any that is of that body (although the body politick or incorporate can have no kindred) yet for that those bodies consist of natural persons, it is a Principal challenge. (d) A Bastard cannot be of kindred to any, and therefore it can be no Principal challenge: And here it is to be known that Affinitas, Affinity, hath in Law two senses. In his proper sense it is taken for that Parentelle that is gotten by marriage. Cum duæ cognationes inter se diversæ per nuptias copulantur & altera ad alterius fines accedit, & inde dicitur Affinis. In a large sense Affinitas is taken also for Consanguinity and Kindred, as in the Writ of Venire facias, and other where. (e) Affinity or Alliance by Marriage is a Principal challenge, and equivalent to Consanguinity when it is between either of the parties, as if the Plaintiff or Defendant marry the Daughter or Cousin of the Juror, or the Juror marry the Daughter or Cousin of the Plaintiff or Defendant and the same continues, or issue be had. But if the Son of the Juror hath married the Daughter of the Plaintiff; this is no Principal challenge but to the favour; because it is not between the parties. Much more may be said hereof sed summa sequor fastigia rerum.

(c) Mirror, Bracton, Britton, Fleta } ubi supra.
3 E.4.14. 21 E.3.3.41. 43 E.3. Chall.55. 45 Ass.25. 26. 22 E.4.2. 14 H.7.2. 15 H.7.9.
(d) 19 H.8.7. 28 H.8. Dier 37. 1 Mariæ Dier 91. 2 Eliz. 188.273.

(f) If there be a challenge for Cousinage, he that taketh the Challenge must shew how the Juror is Cousin. But if the Cousinage, that is, the effect and substance be found, it sufficeth, for the Law preferreth that which is material before that which is formal.

(g) If the Juror hath part of the Land that dependeth upon the same Title.

(g) Bracton, Britton, Fleta } ubi supra. Mirror ubi supra.

(h) If a Juror be within the Hundred, Leet, or any way within the leigniory immediately or mediately, or any other distresse of either party; this is a Principal challenge. But if either party be within the distresse of the Juror, this is no principal challenge, but to the favour.

(h) 9 H.6. tit. Chall 2ª. 38 E.3.25. 22 E.4. Chall.61. 4 H.6.25. 3 H.6.39. 36 H.6. Chall. 46. 22 E.4.1. 27 Ass.28. 22 E.3.12.

(i) If a witness named in the Deed be returned of the Jury, it is a good cause of challenge of him. (k) So it is if one within age of one and twenty be returned, it is a good cause of challenge.

(l) 23 Ass. 11.
(k) Mirror ubi supra.

2. (l) Upon his own act; as if the Juror hath given a verdict before for the same cause, albeit it be reversed by writ of Error, or if after verdict Judgment were arrested. So if he hath given a former verdict upon the same Title or matter, though between other persons. (m) But it is to be observed, that I may speak once for all, that in this and other like cases, he that taketh the Challenge must shew the Record, if he will have it take place as a principal Challenge; otherwise he must conclude to the favour, unless it be a Record of the same Court, and then he must shew the day and term.

(n) So likewise one may be challenged, that he was Inditor of the Plaintiff or Defendant either of Treason, Felony, Wilfull, Trespas, or the like in the same cause.

(o) If the Juror be Godfather to the Child of the Plaintiff or Defendant or è converso; this is allowed to be a good Challenge in our Books.

(p) If a Juror hath been an Arbitrator chosen by the Plaintiff or Defendant in the same cause, and have been informed of, or treated of the matter, this is a principal Challenge. Otherwise if he were never informed nor treated thereof, or otherwise if he were indifferently chosen by either of the parties, though he treated thereof. But a (q) Commissioner chosen by one of the parties for examination of witnesses in the same cause, it is no principall cause of challenge, for he is made by the King under the great Seal, and not by the party as the Arbitrator is, but he may upon cause be challenged for favour.

(r) If he be of counsell, Servant, or of Kin, or of either party, it is a principal Challenge.

(t) If any after he be returned do eat and drinke at the charge of either party, it is a principall cause of Challenge, otherwise it is of a Tryor after he be sworn.

(u) Actions brought either by the Juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal Challenge, unless they be brought by Covin either before or after the return; for if Covin be found, then it is no cause of Challenge; other Actions which do not imply malice or displeasure, are but to the favour.

(w) In a cause where the Parson of a Parish is party, and the right of the Church cometh in debate, a Parishioner is a principall Challenge. Otherwise it is in debt, or any other action where the right of the Church cometh not in question.

(x) If either party labour the Juror, and give him any thing to give his verdict, this is a principal Challenge. But if either party labour the Juror to appear, and to do his conscience, this is no Challenge at all, but lawful for him to do it.

(y) That the Juror is a Fellow Servant with either party, is no principal challenge but to the favour.

(a) Neither of the parties can take that Challenge to the Polls, which he might have had to the Array.

(b) Note, if the Defendant may have a principal cause of Challenge to the Array, if the Sheriff return the Jury, the Plaintiff in that case may for his own expedition allege the same and pray Processe to the Coroners, which he cannot have, unless the Defendant will confesse it: but if the Defendant will not confesse it, then the Plaintiff shall have a venire facias to the Sheriff, and the Defendant shall never take any challenge for that cause, and so in like cases. But on the part of the Defendant any such matter shall not be alledged, and Processe prayed to the Coroners, because he may challenge the Jury for that cause, and can be at no Prejudice.

(c) Challenges concluding to the favour when either party cannot take any principall Challenge, but thereby causes of favour, which must be left to the conscience and discretion of the Tryors upon hearing their evidence, to find him favourable or not favourable. But yet some of them come nearer to a principall Challenge then other. (e) As if the Juror be of kinred, or under the distresse of him in the reversion or remainder, or in whose right the Avowry or Justification is made, or the like: These be no principal Challenges, because he in Reversion, Remainder, or in whose right the Avowry or Justification is, is not party to the Record; otherwise it is if they were made parties by Aid, Receipt, or Voucher, and yet the cause of favour is apparent; so it is of all principal causes, if they were party to the Record. Now the causes of favour are infinite, and thereof somewhat may be gathered of that which hath been said, and the rest I purposely leave the Reader to the reading of our Books concerning that matter. For all which the rule of Law is, that he must stand indifferent as he stands unsworn.

(d) The subject may challenge the Polls where the King is party. And if a man be outlawed of Treason or Felony at the suit of the King, and the party for avoiding thereof alledged imprisonment, or the like, at the time of the Outlawry; though the issue be joyned upon a collateral point, yet shall the party have such Challenges as if he had been arraigned upon the crime it self; for this by a mean concerneth his life also.

¶ Propter

(l) 8. H. 5. 10. 33. H. 6. 1. 10 H. 6. 24. 7. H. 4. 11. 18. E. 4. 12. 21. E. 4. 74. 11. R. 2. tit Chall. 106. 27. Ass. 13.
(m) 43. E. 3. Chall. 93. 8. H. 5. 10.
(n) Mirror ubi sup. Brit. fo. 12. 11 Ass. 36. 8. H. 4. 2. 7 E. 4. 4. 12 Ass. 26. 19 Ass. 6. 40 Ass. 12. 23 E. 3. c. 3.
(o) 42 Ass. 20. 9. H. 4. 15. 19 H. 6. 66. 4 E. 4. 11. 7 E. 4. 4.
(p) 20 H. 6. 39. 9 E. 4. 48. 35 H. 6. 19 H. 6. 3 H. 6. 24. 7 H. 7. 10.
(q) Lib. 9. fo. 71. Pescocks case.
(r) Mirror, Bracton, Britton } ubi supra. 12 Ass. 36. 26 Ass. 56. 28 Ass. 16. 31 Ass. 7. 44 Ass. 18.
(s) 1 3 H. 4. 13. 11 R. 2. Chall. 164.
(t) Bract. } ubi supra. Fleta } 44 E. 3. 5. 38. 44 Ass. 23. 8 E. 3. 25. 43 E. 3. 31. 23 E. 4. 1. 38 H. 6. 6. 43 E. 3. Chall. 93. 11 H. 4. 26. 11. H. 6. 15. 32 E. 3. Chall. 189. 24 E. 3. 37. 39 Ass. 2. 20 Ass. 11 43 Ass. 46.
(u) 17 Ass. 15.
(w) 8 E. 3. 39. 29 H. 6. 39. 33 H. 8. Dyer 48.
(x) 22 Eliz. Dyer 367.
(y) Bracton, Britton, Fleta } ubi supra. 49 E. 3. 1.
(a) 9 E. 4. 6. 21 E. 4. 31. 22 E. 4. 3. 14 H. 6. 2. 20 E. 4. 2. 3 H. 7. 5. 22 Eliz. Dyer 367.
(b) Mirror cap. 3. dordinance dattaint. Bract. lib 4. fol. 189. Brit. f. 134, 135. Fleta lib. 4. c. 8. 7 H. 6. 25.
(c) 9 H. 7. 3. 10 H. 7. 22. 3 H. 7. 2. 10 E. 4. 12. 15 E. 4. 18. 12 Ass. 23.
(d) 6 R. 2. Chal. 141. 19 Ass. 6. 38. Ass. 22. 11 R. 2. Chall. 165. 4 H. 5. ibid. 153.

¶ *Propter delictum.* (e) As if the Juror be attainted or convicted of treason or felony, or for any offence to life or member, or in attaint for a false verdict, or for perjury as a witness, or in a conspiracy, at the suit of the King, or in any suit, (either for the King or for any subject,) be adjudged to the Pillory, Tumbrell, or the like, or to be branded, or to be stigmatique, or to have any other corporal punishment whereby he becometh infamous, (for it is a maxime in Law, Repellitur à sacramento infamis) these and the like are principal causes of challenge. So it is if a man be outlawed in treipals, debt, or any other action; for he is Exlex, and therefore is not legalis homo. And old Books have said that if he be excommunicated, he could not be of a Jury.

(e) Mirror, Bracton, Britton, Fleta, ubi supra. 11 H.4.41. 12 H.4.10. 33 H. 6. 21.

(f) See the Statutes of W. 2. and Artic. supra cartas, what persons the Sheriff ought to return on Juries. And see F.N.B. breve de non ponendis in Assisis & juratis, and the Register in the same Writ. And see there what remedy the party hath that is returned against Law.

(f) W.2. cap. 38 Artic. super cart. cap. 3. F.N.B. 165, & 166, Register.

It is necessary to be known the time when the challenge is to be taken. (g) First, he that hath divers challenges must take them all at once, and the Law so requireth indifferent trials, and divers challenges are not accounted double. (h) Secondly, if one be challenged by one party, if after he be tried indifferent, it is time enough for the other party to challenge him. (i) Thirdly, after the challenge to the Array, and trial duly returned, if the same party take a challenge to the polls, he must shew cause presently. (k) Fourthly, so if a Juror be formerly sworn, if he be challenged he must shew cause presently, and that cause must rise since he was sworn. (l) Fifthly, when the King is party or in an appeal of felony, the Defendant that challengeth for cause, must shew his cause presently. Sixthly, if a man in case of treason or felony challenge for cause, and he be tried indifferent, yet he may challenge him peremptorily. Seventhly, a challenge for the Hundred must be taken before so many be sworn, as will serve for hundredors, or else he loseth the advantage thereof.

(g) 9 E.4.16. 10 H.5.9. 37 H.6.8. 3 H.6.38. Brook tit. Chall.8. 7 H.6.40. 14 H.7.5,6. (h) 9 E.4.16. 27 H.8.2. (i) 43 E 3. Chall. 93. 20 E.3.ibid.116. 22 E.4. ibid.61. 7 H.4.41. 3 El. Dower 201. (k) 22 E.4.1. 9 H.5.6. (l) 1 H.5.10. 38 Ass.22.

8 (m) In a writ of Right, the grand Jury must be challenged before the four Knights, before they be returned in Court, for after they be returned in Court, there cannot any challenge be taken unto them.

(m) 7 H.4.20. 15 E.4.1.

9. Nota (n) The Array of the Tales shall not be challenged by any one party, until the Array of the principal be tried: but if the Plaintiff challenge the Array of the principal, the Defendant may challenge the Array of the Tales. After one hath taken a challenge to the Poll, he cannot challenge the Array.

(n) 9 E.4.27. 9 H. 5.13. 34 Ass.6. 13 E.3. Chal.108.

Now it is to be seen how challenge to the Array of the principal Pannel, or of the Tales, or of the Polls shall be tried, and who shall be triors of the same, and to whom process shall be awarded.

1 (o) If the Plaintiff allege a cause of challenge against the Sheriff, the process shall be directed to the Coroners, if any cause against any of the Coroners, process shall be awarded to the rest, if against all of them, then the Court shall appoint certain Elisors or Eltiors (so named ab eligendo) because they are named by the Court, against whose return no challenge shall be taken to the Array, because they were appointed by the Court, but he may have his challenge to the Polls. (p) Note, if process be once awarded for the partiality of the Sheriff, though there be a new Sheriff, yet process shall never be awarded to him: for the entry is, Ita quod vicecomes se non intromittat. But otherwise it is, for that he was Tenant to either party, or the like.

(o) 18 E. 4. 8.

(p) 15 H.7.9. 14 H.7.31. 18 E. 4. 3.

2 (q) If the Array be challenged in Court, it shall be tried by two of them that be impannelled to be appointed by the Court: for the triors in that case shall not exceed the number of two, unless it be by consent. But when the Court names two for some special cause alledged by either party, the Court may name others if the Array be quashed, then process shall be awarded, ut supra.

(q) 29 Ass.3. 19 H.6.48. 21 H.6. Chal.38. 33 H.6. 21. 4 E.4.17. 43 E.3. Chal. 95. 2 R.2.ib.101. 34 Ass.6. 27 Ass.28. 43 Ass.26.

(r) If a pannel upon a Venire facias be returned, and a Tales, and the Array of the principal is challenged, the triors which try and quash the Array shall not try the Array of the Tales; for now it is as if there had been no appearance of the principal pannell: but if the triors affirm the Array of the principal, then they shall try the Array of the Tales. If the Plaintiff challenge the Array of the principal, and the Defendant the Array of the Tales, there the one of the principal and the other of the Tales shall try both Arrays. For other matter concerning the Tales see (s) in my Reports matters worthy of observation. (t) When any challenge is made to the Polls two triors shall be appointed by the Court, and if they try one indifferent, and he be sworn, then he and the two triors shall try another: and if another be tried indifferent, and he be sworn, then the two triors cease and the two that be sworn on the Jury shall try the rest. (u) If the Plaintiff challenge ten, and the Defendant one, and the twelve is sworn, because one cannot try alone, there shall be added to him one challenged by the Plaintiff, and the other by the Defendant. (When the trial is to be had by two Counties, the manner of the trial is worthy of observation, and apparent in our (w) Books. (x) If the four Knights in the writ of right be challenged they shall try themselves, and they shall chuse

(r) 9 E 4.46. 19 H.6.48. 34 Ass.6. 7 E.6. Dier 78. 9 H. 5. 11.

(s) Lib.10. fol.104,105. Denbawds Case.

(t) 19 H.6.9. 22 E.4. Chal. 61, 62.

(u) 7 H.4. 41.

(w) 11 H.6.61. 48 E.3.36. 11 H. 4. 63.

(x) 22 E.3.18. 39 E.3.2.

the grand Aſſiſe, and try the challenges of the parties. (y) If the cauſe of challenge touch the diſhonor or diſcredit of the Juror, he ſhall not be examined upon his oath; but in other caſes he ſhall be examined upon his oath, to informe the triors. (z) If an inqueſt be awarded by default, the Defendant hath loſt his challenge; but the Plaintiff may challenge for juſt cauſe, and that ſhall be examined and tried.

(y) 49 E.3.1,2.

(z) 2 H.4.14. 4 E.4.1. 10 E.3.32. 22 Aſſ.28.31. 21 H.6.56. 16 Aſſ.1. 5 E.5.35,36.

Whereſoever the Plaintiff is to recover per viſum juratorum, there ought to be ſix of the Jury that have had the view, or known the land in queſtion, ſo as he be able to put the Plaintiff in poſſeſſion if he recover.

In a Proprietate probanda, and a Writ to inquire for waſte, the parties have been received to take their challenges. (a) But paſſing over many things touching this matter, I will conclude with the ſaying of * Bracton, Plures autem aliæ ſunt cauſæ recuſandi juratores, de quibus ad præſens non recolo; ſed quæ jam enumeratæ ſunt, ſufficiant exempli cauſa. And ſo let us return to Littleton.

(a) 8 H.5.tit. Chall.167. 2 H.4.3. 34 E.3. Chall. 175. 21 H.6.56. 8 E.4.3. 17 E.4.1.

* Bracton lib.4. fol.185.

¶ *De viſneto, &c.* It ſhould be Vicineto: Vicinetum is derived of this word Vicinus, and ſignifieth Neighbourhood, or a place near at hand, or a neighbour-place. And the reaſon whereof the Jury muſt be of the Neighbourhood, is for that Vicinus facta Vicini præſumitur ſcire, all which is implied in this word. (&c.)

¶ *Quod ſummoneat eos, &c.* Summoneo is compounded of Sub & moneo, & Euphoniæ gratia it is ſaid ſummoneo, to warn or ſummon, as in this caſe the Sheriff muſt warn or ſummon the Recognitors of the Aſſiſe to appear before the Juſtices of the Aſſiſe, &c. And it is truly ſaid, (b) that in this caſe Legitimam ſummonitionem recipere in propria perſona ubicunque inventus fuerit in comitatu in quo fuerit res petita, qui quidem ſi non inveniatur, ſufficit ſi ad domicilium fiat, dum tamen alicui de familia ſua manifeſtè fuerit relata, &c.

(b) Bracton lib.5. fo.333, 334. Mirr.cap.2. Sect.19. Fleta lib.6. cap.6. Brit. cap.121.

¶ *Per bonos ſummonitores.* Here two things are to be obſerved. First, that the ſummoners muſt be Boni (id eſt) fide digni ut valeant legitimum teſtimonium perhibere, cum inde per Juſticiarios fuerint requiſiti. (c) And another ſaith, Fems, ne ſerfs, ne enfans, ne nul infamys, ne nul que neſt ſiſe tenant, ne poet eſte bone ſummoner. 2. It is ſpoken in the plural number. Per bonos ſummonitores, and therefore there muſt be two at the leaſt. Nec ſufficit quod ſummonitio fiat per unum tantùm, &c. neceſſe eſt igitur quod per duos ad minus fiat, &c. There is alſo a ſummons of a Tenant in a reall action, whereof, and of Pernors and Veiors you ſhall read (d) plentifully and plainly in our Books, whereunto being matter of courſe I refer you.

(c) Bracton, Britton, Fleta } ubi ſupra.

Bracton, Britton, Fleta, Mirror } ubi ſupra.

(d) Regiſt. judicial.1,2. 107. 43 E.3.32. 24 E.3.35. 3 E.3.48. 50 E.3.16. 8 H.6.1.b. F.N.B. 97.

Item Summonitionum alia eſt Generalis, alia Specialis, whereof you ſhall find excellent matter in our (d) old Books, where you ſhall alſo read at large De Summonitione, Præſummonitione, & Reſummonitione.

(e) Mirror, Bracton, Britton, Fleta } ubi ſupra.

¶ *Facere recognitionem.* Cognitio is knowledge, or knowledgment, or opinion, and recognition is a ſerious acknowledgment or opinion upon ſuch matters of fact as they ſhall have in charge, and thereupon the Jurors are called Recognitores aſſiſæ, Vide Sect. 233. Recognitio is taken for the confeſſion of the Tenant.

¶ *Pannel*, is an Engliſh word, and ſignifieth a little part; for a Pane is a part, and a Pannel is a little part, as a Pannel of Wainſcot, a Pannel of a Saddle, and a Pannel of Parchment wherein the Jurors names be written and annexed to the Writ. And a Jury is ſaid to be impannelled, when the Sheriff hath entred their names into the pannel, or little piece of Parchment, in Pannello aſſiſæ.

Regiſter 223.

¶ *Briefe de droit.* Breve de recto, Writs of Right be of two natures, 1. a Writ of Right, whereof Littleton here ſpeaketh, which is the higheſt writ of all other real Writs whatſoever, and hath the greateſt reſpect, &c. and the moſt aſſured and final judgment, and therefore the Writ is called a writ of Right right, and this in (f) old books is called Dreit dreit, and this Writ, Eſt darrein remedie de tours recoveries enter tours ordres des pleas, and the Jury in this Writ is called Magna Aſſiſa, or magna Jurata, as Littleton here ſaith. 2. Writs of Right in their nature, as the Rationabili parte, and Ne injuſtè vexes.

(f) Bracton lib.5.fo.372. Britton fo.117. Fleta l.6. ca.1. Glanvil lib.1. ca.4,5, &c. lib.2. ca.7. lib.12.ca.1.

¶ *De Recto.* Rectum, is a proper and ſignificant word for right that any hath, and Wrong or Injury, is in French aptly called Tort, becauſe Injury and Wrong is wreſted or crooked, being contrary to that which is right and ſtraight. Now the Law that is Linea recta eſt index ſui & obliqui. And Britton * ſaith, that Tort a la ley eſt contrary, and as aptly for the cauſe aforeſaid is injury in Engliſh called Wrong. And Injuria is derived of In and jus, becauſe it is contrary to right, ſo as a faire tort is facere tortum, and Fleta ſaith, (g) Eſt autem jus publicum & privatum quod ex naturalibus præceptis aut gentium, aut civilibus eſt collectum, & quod in jure ſcripto jus appellatur, id in lege Angliæ rectum eſſe dicitur. And in the (h) Mirror, and other places of the Law it is called Droit, as Droit defend, the Law defendeth.

* Britton fol.116. Fleta lib.2. ca.1.

(g) Fleta lib.6. cap.1.

(h) Mirror ca.2. Sect.16. & cap.5. Sect.2.

¶ *En le Regiſter.* Regiſter is the moſt ancient book of the Common Law, and it is two-

twofold; viz. Regiſtrum brevium originalium, and Regiſtrum brevium judicialium. It is a French word, and ſignifieth a memoriall of Writs. Sometimes the Regiſter of original Writs is called Regiſtrum Cancellariæ, becauſe all original Writs do iſſue out of the Chancery, as extra officinam Juſtitiæ. For the antiquity and eſtimation of which Book I refer the Reader to the Epiſtle before the tenth part of my Commentaries. 13 E 1. cap. 24. Pl. Com. 228. b.

¶ *Magna aſſiſa eligenda*, is a Judicial Writ to the Sheriff to return four lawful Knights before the Juſtices, there upon their oaths to return twelve Knights of the Vicinage to try the Miſe in a Writ of Right.

¶ *Aſſiſe de common de paſture, &c.* Of what things an Aſſiſe of Novel diſſeiſin lay at the Common Law, and of what by the ſtatute, you may read at large in my (k) Reports in John Webbs Caſe, where the Authorities of Law are plentifully cited, and they and the ſtatute well explained. But ſince L. Cleton wrote, a man may have (l) an Aſſiſe of Novel diſſeiſin, Aſſiſe of Mordanc' or any Præcipe quod reddit, Quod ei deforceat, writs of Dower, or other writs original, as the caſe ſhall require, of Tythes, Penſions, or other Eccleſiaſticall or Spirituall profit, if he be diſſeiſed, deforced, wronged, or otherwiſe kept or put from the ſame, which by the Laws and Statutes of the Realm are made temporall, or admitted to be or abide in temporal hands, ſo as by the ſaid act a Lay-man having tythes or offerings, may either ſue for the ſubtraction or with-holding of the ſame in the Eccleſiaſtical Court, or at the Common Law at his election. And ſeeing no ſpecial Writ is given * by the ſtatute, the party muſt have a general Writ of Aſſiſe de libero tenemento, and make a ſpecial plaint. But his Præcipe muſt be, Quod reddat omnes & omnimodas decimas majores, mixtas, & minutas, infra Dale quoquo modo creſcen' contingen' ac annuatim renovan' or the like, according to his caſe. (m) But neither Aſſiſe nor any Præcipe did lie of them as of tythes, or any other Eccleſiaſtical duty at the Common Law: for the Aſſiſe brought of the tenth part of all manner of Corn growing in an hundred acres of land after the tythes of the Parſon taken was a Lay profit Apprender, and no Eccleſiaſtical duty. (k) Lib. 8. fol. 45. (l) 32 H. 8. cap. 7. * 7 E. 6. Dier 83, &c. (m) 44 E. 3. 5. Vide Regiſt. 165. Vide le briefe de indicavit, W. 2. c. 5. Conjunctim feoffatis, ca. ultimo. Bracton lib. 5. fol. 402. Britton fol. 260. Regiſt. fol. 35. 4 E. 3. 27. 29. 16 E. 3. Quare imp. 147. Vide 2 H. 2. fit. Grant 89.

But tythes or other Eccleſiaſtical duties, that came to the Crown by the ſtatutes (n) of 27 H. 8. 31 H. 8. 37 H. 8. and 1 E. 6. are by thoſe ſtatutes, and this of 32 H. 8. and of 1. and 2. Phil. and Mariæ, in the hands of Lay-men temporal inheritances, and ſhall be accounted Aſſets: and husbands ſhall be Tenants by the Curteſie, and wives endowed of them, and ſhall have other Incidents belonging to temporal inheritances, onely this Eccleſiaſtical quality they have, that the owner or poſſeſſor thereof may ſue for the ſubtraction of the ſame in the Eccleſiaſtical Court. (n) 27 H. 8. of Monaſteries, not printed. 31 H. 8. c. 13. 37 H. 8. c. 4.

But by another (o) ſtatute, remedy is given as well to the Lay perſon, as to the Eccleſiaſtical perſon for ſubtraction of all manner of predial Tythes, and he ſhall recover the treble value if they be not juſtly divided or ſet forth and albeit the treble value be not expreſſly given to the propriety of the Tythes, yet foraſmuch as he is the party grieved, and he hath the property and intereſt in the tythes, the treble value is given to him, and whenſoever a Statute giveth a forfeiture or penalty againſt him which wrongfully detaineth or diſpoſſeſſeth another of his duty or intereſt, in that caſe he that hath the wrong ſhall have the forfeiture or penalty, and ſhall have an action therefore upon the ſtatute at the Common Law, and the King ſhall not have the forfeiture in that caſe. And ſo it was (p) adjudged in the Exchequer upon conference with other Judges in an information for the treble value for not ſetting out of tythes in Iclington in the County of Cambridg. And if the proprietary will ſue for ſuch ſubtraction of tythes in the Eccleſiaſtical Court, then he ſhall recover but the double value by the expreſſe words of the Act. Wherein it is to obſerved, that the Act of Parliament doth give a temporal remedy at the Common Law to Parſons and Vicars and other Eccleſiaſtical perſons for an Eccleſiaſtical duty, and to Lay-men proprietaries of tythes the like remedy: but as it hath been ſaid, they have election either to ſue for the treble value at the Common Law, or for the double value in the Eccleſiaſtical Court, or for ſubtraction of tythes there alſo. (o) 2 E. 6. cap. 13. (p) Paſch. 29 Eliz. between the Queen and Wood in the Exchequer. And ſo it was reſolved by all the Judges upon conference, Mich. 4 Ja. Reg.

¶ *Aſſiſe de Mortdanceſtor.* Aſſiſa mortis anteceſſoris. (q) This writ a man may have after the deceaſe of his immediate Anceſtor, as where his father, mother, brother, ſiſter, uncle or aunt die ſeiſed of any lands, and an eſtranger abate, &c. (q) Britton fol. 178, 179, &c. Bracton lib. 4. tractat. 3. per totum, fol. 253, &c. Mirror cap. 2. Sect. 15. F. N. B. 114, &c.

¶ *Aſſiſe de darreine preſentment.* Aſſiſa ultimæ præſentationis, whereof you ſhall read (r) plentifully in our Books. (r) Britton c. 30. fol. 222. Bract. lib. 4. fol. 238. Mirror ubi ſupra. F. N. B. 195. Regiſt. orig. 30.

To theſe may be added Aſſiſa utrum, or Juris utrum, (ſ) which is the higheſt writ a Parſon, Vicar, &c. can have for the recovering of the Glebe, land, &c. in right of his Church. But it may be demanded, wherefore theſe original writs are called by the ſpecial name of Aſſiſes, more then other original writs: and here Littleton yeilderh the reaſon, becauſe that by theſe writs it is commanded to the Sheriff Quod ſummoneat 12, which is as much to ſay as to ſummon a Jury. So as in theſe caſes there is a Jury returned the firſt day, and they are to (ſ) Bracton fol. 285, 286. Britton cap. 95. fol. 234. Mirror ubi ſupra. F. N. B. 48, 49.

appear as ſoon as the Defendant. And becauſe by theſe writs a Jury is to be returned, the Law called them Aſſiſes, ab effectu, becauſe an Aſſiſe (which in this ſenſe ſignifieth a Jury) is to be returned. But beſide the ſignification of the Writ * of Aſſiſe whereof Littleton here ſpeaketh, it ſignifieth the whole proceeding upon the Writ.

(*) Mag. Chart. cap. 12. And W. 2. cap. 25.

In other originall Writs regularly no Jury is to be returned before the appearance of the parties, and an iſſue joyned between them, and therefore theſe other originals are not called Aſſiſes.

¶ *Pur un ordinance.* Here Aſſiſa ſignifieth an Ordinance, &c. Ordinance, Ordinatio is derived of the Verb ordinare, to ordain or ſet in order. And note, an Act (r) of Parliament (as Littleton here proveth) is an Ordinance, for it ſets down orders which are to be kept as Laws: and ſo is Ordinatio Foreſtæ, Ordinatio de Inquiſitionibus, and Ordinatio contra Servientes, and other ſtatutes many times called Ordinances, and it is ſaid almoſt in every Act of Parliament, be it therefore Ordained, &c. by authority of this Parliament, or the like. But è converſo, every Ordinance is not a ſtatute, as that of 8 H. 6. cap. 29. for every ſtatute muſt be made by the King, with the aſſent of the Lords and Commons, and if it appear by the act, that it was made by two of them onely, it is no ſtatute.

(r) 19 H. 3. Juris utrum 16. 39 E. 3. 1. 7. 42 E. 3. 38. 29 E. 3. 7. Regiſt. orig. 189. 33 E. 1. 5 R. 2. cap. 2. Vide l. 8. le Princes caſe.

The example put by Littleton, is Aſſiſa panis & cerviſiæ, (ſ) This Ordinance was made at a Parliament holden anno 51 H. 3. and the like Ordinance was made, entituled, Aſſiſa cerviſiæ, which you may ſee in the old Magna charta, fol. 57. b. (t) And ſo Aſſiſa de Claredon, which was in 10 H. 2. and Aſſiſa Foreſtæ; ordained in anno 34 E. 1. and ſuch like. And aptly an Ordinance of Parliament Antiquity hath called an Aſſiſe, for that an Act of Parliament doth ordain ſuch a certain order, as nothing can be done more or leſs by right. (u) And Fleta ſaith, Et habet rex in poteſtate ſua, ut leges & conſuetudines & aſſiſas in regno ſuo proviſas & approbatas & juratas, &c. Where Aſſiſes are taken for ſtatutes, which are the effects of the Seſſions of Parliament.

(ſ) Mir. c. 1. Sect. 13. &c. 4. de Articles de Eire. Bracton lib. 3. fol. 136. (t) Stam. fol. 118. Mir. c. 2. Sect. 15. Hoveden 313. Regiſt. orig. 279. (u) Fleta lib. 1. cap. 17.

De ponderibus & menſuris, of Weights and Meaſures is moſt neceſſary learning to be known, and daily in uſe, but it belongeth not to this Treatiſe. In ſome other (if God ſo pleaſe) ſomewhat ſhall be ſaid of them.

Sect. 235.

¶ *ET le Tenant attorna.* Here it appeareth that an Attornment (that is, an agreement to the Grant) is no ſeiſin of the Rent.

¶ *Il ne ad aſcun Remedie, &c.* which is as much to ſay, as he hath not any remedy either at the Common Law, or in any Court of equity, which is worthy of obſervation.

See more of this in the Chapter of Attornment, Sect. 565.

¶ *Voile doner al grantee un denier ou un maile, &c. en noſme de ſeiſin de rent, &c.* Here it is to be obſerved, that payment of any money in name of ſeiſin of the Rent before any rent become due, is a good ſeiſin of the rent to have an Aſſiſe when it is due, and that which is given in the name of ſeiſin of the Rent worketh his

¶ Item ſi ſoit Seignior & Tenant, & le Seignior granta le rent ſon Tenant per ſon fait a un auter, ſavant a luy les ſervices, & le Tenant atturna, ceo eſt un Rent Seck, come eſt dit adevant. Mes ſi le rent a luy ſoit denie al prochein jour de payment, il ny ad aſcun remedie pur ceo que il navoit de ceo aſcun poſſeſſion. Mes ſi le Tenant quaunt il atturn al grantée, ou apres, voile doner al grantee un denier ou un maile, &c. en

ALſo if there be Lord and Tenant, and the Lord granteth the Rent of his Tenant by Deed to another, ſaving to him the other Services, and the Tenant atturneth, that is a Rent Seck, as it is afore ſaid. But if the Rent be denied him at the next day of payment, he hath no Remedy, becauſe that he had not thereof any poſſeſſion. But if the Tenant when he atturneth to the Grantee, or afterwards, will give a peny or a halfpeny to the Grantee in

noſme

noſme de ſeiſin de le rent, donques ſi apres a le procheine jour de payment le rent a luy ſoit denie, il aver Aſſiſe de Novel Diſſeiſin. Et iſſint eſt, lou home grãta per ſon fait un annual rent iſſuant hors de ſa terre a un auter, &c. ſi le Grantor adonques ou apres paya al Grantée un denier ou un mail en noſme de ſeiſin de le rent, donques ſi apres al procheine jour de payment le rent ſoit denie, le Grantée poet aver aſſiſe, ou autrement nemy, &c.

name of ſeiſin of rent, then if after at the next day of payment the Rent be denied him, he ſhall have an Aſſiſe of *Novel Diſſeiſin*. And ſo it is, if a man grant by his Deed a yearly Rent iſſuing out of his land to another, &c. if the Grantor then or after pay to the Grantee a peny or a halfpeny in the name of Seiſin of the Rent, then if after the next day of payment the Rent be denied, the Grantee may have an Aſſiſe, or elſe not, &c.

effect to give ſeiſin, and yet is no part of the Rent, nor ſhall be abated out of the Rent. But you ſhall read more hereof hereafter, Sect. 565.

¶ *Un denier, ou un maile, &c.* Here by this (&c.) is implied, that ſo it is of the gift of a Sheep, or an Ox, or a Ring, or a pair of Gloves, or a pound of Pepper, or of any valuable thing.

¶ *Iſſint ſi home grant per ſon fait un annual rent iſſuant hors de ſon terre a un auter, &c.* By this (&c.) is implied, that the grant and delivery of the Deed is no ſeiſin of the Rent: and that a ſeiſin in Law, which the Grantee hath by the grant, is not ſufficient to maintain an Aſſiſe, or any other reall Action, but there muſt be an actuall Seiſin.

*Sect.*236.

¶ ITem de Rent ſecke, home poet aver Aſſiſe de Mortdancestor, ou Briefe de Ayel, ou de Coſinage, & touts auters manners dactions Reals, come la caſe giſt, ſi come il poet aver daſcun auter rent.

ALſo of Rent ſeck a man may have an Aſſiſe of *Mortdanceſtor*, or a Writ of *Ayel* or *Coſinage*, and all other manner of Actions reals, as the caſe lieth, as he may have of any other Rent.

¶ *Briefe de Ayel.* Breve de Avo. This Writ lieth where the Grand-father or Grand-mother was ſeiſed of any Land in fee the day that he died, and an eſtranger abate, the heir ſhall have this Writ. (w) And if the great Grand-father. Beſaiel, Proavus, or great Grand-mother Beſaieles, Proavia, be ſeiſed, as is aforeſaid, and die, &c. the heir ſhall have a Writ de Beſaiel, proavo, or Beſaieles proavia, &c.

Brack. li.2. fo.67. Brit.cap.89. &c, 76. Fleta li.5. c.7,8,&c. F.N.B. 221.

(w) 6 E.3.24. 7 E.3.46. Regiſt.226. F.N.B.221. a. b. Britton cap.76.

¶ *Briefe de Coſinage.* Briefe de Conſanguinitate. (a) This Writ lieth where the great Grand-fathers father (Tritavus (id eſt) tertius avus, or abavus, (id eſt) avus avi) was ſeiſed, as is aforeſaid, or where Grand-fathers or Grand-mothers mother, &c. ut ſupra. And ſo it is of the ſeiſin of the brother of the Grand-fathers Grand-father, &c.

(a) Brack. lib.2. f.67. Brit. cap.89.& c.76. Fleta l.5. cap.7,8. F.N.B. 221.

¶ *Rent ſecke.* And ſo it is of a Rent charge to all reſpects.

¶ *Et touts auters manners dactions reals.* Hereupon ſome have gathered, that a man ſhall have a Writ of Right of a Rent ſeck or of a Rent charge, albeit they be againſt common right. But that which hath been ſaid by Littleton of an Aſſiſe of Mortdaunceſtor, a Writ of Ayel, Coſinage, and other actions reals, is to be underſtood after Seiſin had by ſome of the Anceſtors of the Demandant; for without an actual ſeiſin, or a ſeiſin in Deed, none of theſe are maintainable.

15 E.2. Hors de ſon fee 97. 3 E.3.15. 4 E.3. Droit 31. F.N.B. 6. 14 E.4.5. Diverſity des Courts 177. 33 E.3. Judgm. 252.

Sect.

Sect. 237.

¶ *Rescous.* Rescussus is here described by Littleton: It is an ancient French word coming from Rescourrer, (id est) Recuperare, that is, to take from, to rescue, or recover. Rescous is a taking away, and setting at liberty against Law, a distress taken, or a person arrested by the Process, or course of Law. And all is one, as to the point of the Disseisin, to rescue the distress after it is taken, and before hand to resist and withstand the taking of it, but yet it is no Rescous untill it be distreined. And therefore you may make six Disseisins of a Rent service: Rescous of a distress; Resistance to distrain; Replevin; Inclosure; Counterpleading of the Title, and Vouching of a Record, and failing. If the Tenant rescue the Distress, and after is disseised of the Tenancy, yet the Assise lieth against him, for the disseisin done of the Rent by the Rescous.

18 E.3.3. 44 E.3. 20. b. 20 H.7.1. 2. 21 H.7.40. 2. F. N. B.102. b. 6 H.6. Disseisin 9. 4 E.2. Ass.43. 8 E.1. ibid. 416. W.2.c.6. 12 H.7. Kelway 20.

¶ *Pur son Rent arere.* Here Littleton deciderh an ancient question in our Books, (p) viz. That the Rent must be behind, or else the Tenant may make Rescous: for if no Rent be behind when the Distress is taken, how can the Rescous amount to a disseisin of the rent when none is due? And so it is, if the Tenant resist the Lord to distrain when there is no Rent behind, this can be no disseisin of the Rent for the cause abovesaid. And this (as it appeareth by Littleton) holdeth as well in case of a rent service between Lord and Tenant, as in case of a Rent charge, &c. And so I heard Sir Christopher Wray, Chief Justice, say that he had adjudged it. And that which the Tenant may do when there is no rent behind, may a stranger do, if his beasts be distrained. If the Tenant tender the Rent to the Lord when he is to take the distress, if notwithstanding the Lord will distrein, the Tenant may make Rescous. If the Rent of the Lord be behind, and the Lord distrein the Cattel of the Tenant in the high-way within his fee, the Tenant may make Rescous,

(p) 6 R.2. Rescous 10. 40 E.3. 33. 31 E.3. Rescous 17. 22 H.6.2. b.6. E.4.11.b. 7 E.4.20. 5 E.4.8. 34 H.6.47. F.N.B. 102. E. 2 H.4.21.16. 4 E.6. Distress Br.24. 39 E.3.35. 39 H.6.7. Lib.4. fol.11. Bevils case. 8 H.4.1.

7 E.4. 24.

27 E.3.43. Vide tit. Rescous 14.

¶ Item sont trois causes de disseisin de Rent Service, s. Rescous, Replevin, & Enclosure. Rescous est, quaunt le Seignior en la terre tenus de luy distrein p̄ rent arere, & le distres de luy soit rescous; ou si le Seignior vient sur la terre & voile distreiner, & le Tenant ou auter home ne luy voile suffer, &c. Replevin est, quant le Seignior ad distreins, & Replevin soit fait de les distresse per Briefe ou per Plaint. Enclosure est, si les Terres ou les Tenements sont issint encloses, que le Seignior ne poit bener deins les c̄res ou Tenements pur distreins. Et la cause pur que tiels choses issint faits sont disseisins al Seignior est, pur ceo que per tiels choses le Seignior est disturbe de le mean per que il doit avoire & bener a son rent, s. de le distresse.

Also there be 3. causes of Disseisin of Rent Service, that is to say, Rescous, Replevin, and Enclosure. Rescous is, when the Lord distraineth in the Land holden of him for his Rent behind, if the distresse be rescued from him; or if the Lord come upon the Land and will distrain, and the Tenant or another man will not suffer him, &c. Replevin is, when the Lord hath distrained, and Replevin is made of the distress by writ or by Plaint. Enclosure is, if the Lands and Tenements be so enclosed, that the Lord may not come within the lands and tenements for to distrain. And the cause why such things so done be Disseisins made to the Lord is, for that by such things the Lord is disturbed of the mean by which he ought to have come to his Rent, s. of the distress.

ſcous, for that it is defended by Law to diſtrein in the high-way. And by the ſame reaſon, if the Lord will diſtrein averia carucæ, where there is a ſufficient diſtreſs to be taken beſides, or if the Lord diſtrein any thing that is not diſtreinable either by the Common Law or by any Statute, the Tenant may make Reſcous.

Note, there is a reſcous in Deed and a reſcous in Law; of reſcous in Deed ſomewhat hath already been ſpoken. A reſcous in Law is when a man hath taken a diſtreſs, and the cattle diſtreined as he is driving of them to the Pound go into the houſe of the Owner, if he that took the diſtreſs demand them of the Owner, and he deliver them not this is a reſcous in Law, and ſo of the like. 3 E.3. Reſcous 14.

And every word of Littleton is material, for he ſaith:

¶ *En la terre tenus de luy.* And therefore if the Lord diſtrein out of his fee in Lands not holden of him, the Tenant may make Reſcous, unleſs it be in ſome ſpecial Caſes.

As if the Lord come to diſtrein Cattel which he ſeeth then within his fee, and the Tenant or any other, to prevent the Lord to diſtrein, drive the Cattle out of the fee of the Lord into ſome place out of his fee, yet may the Lord freſhly follow and diſtrein the Cattle, and the Tenant cannot make Reſcous, albeit the place wherein the diſtreſs is taken is out of his fee, for now in judgment of Law the diſtreſs is taken within his fee, and ſo ſhall the Writ of reſcous ſuppoſe. 44 E.3.20. 6 R. 2. Reſcous 11. 11 H.7.4. 21 H.7.40. 34 H.6.18. 16 E.4.10. Lib.9. fol.22. in caſe de avowry.

But if the Lord coming to diſtrein had no view of the Cattle within his Fee, though the Tenant drive them off purpoſely, or if the Cattle of themſelves after the view go out of the fee, or if the Tenant after the view remove them for any other cauſe then to prevent the Lord of his diſtreſs, then cannot the Lord diſtrein them out of his fee, and if he doth, the Tenant may make Reſcous.

If a man come to diſtrein for Damage Feaſant, and ſee the beaſts in his ſoyl, and the Owner chaſe them out of purpoſe before the diſtreſs taken, the Owner of the ſoyl cannot diſtrein them, and if he doth, the Owner of the cattle may reſcue them, for the beaſts muſt be damage Feaſant at the time of the diſtreſs, and ſo note a diverſity. 16 E.4.10. 2 E. 3. avowry 182. Lib.9. ubi ſupra.

There is a diverſity (a) between a Warrant of Record, and a Warrant, or an Authority in Law, for if a Capias be awarded to the Sheriff to arreſt a man for Felony, albeit the party be innocent, yet cannot he make Reſcous. But if a Sheriff will by authority which the Law giveth him, arreſt any man for felony which is not guilty, he may reſcue himſelf. (a) 14 H.7.20. tit. Juſtice de Peace 9.

¶ *Replevin*, (b) is derived of Replegiare, to redeliver to the Owner upon pledges or ſurety. (b) Brit.fo.108. Fleta lib. 4. cap.1. Mirror cap.2. Sect.15.

(c) Alſo to counterplead the Plaintiff in an Aſſiſe by which he is delayed, maketh him that pleadeth it a diſſeiſor. Otherwiſe it is, if he had pleaded Nul tort, &c. (c) 24 Aſſ.3. 29 Aſſ.52. Fleta lib.4. cap.1. Britton fol. 108.

¶ *Encloſer*, is here alſo deſcribed, and needs no other explanation, for the Lord cannot (d) break open the gates, or break down the Incloſures to take a diſtreſs, and therefore the Law accounts it a diſſeiſin. But all theſe are intended by Littleton to be diſſeiſins after an actual ſeiſin had, and when the Rent is behind, otherwiſe none of theſe are diſſeiſins at all. (d) 10 E.3.9. 49 E.3.14. 7 E.3.3. 11 H.7.28. 8 Aſſ. 18. 10 E. 4.2.

But wherefore ſhould a Reſcous of the diſtreſs by the party himſelf, or a Replevin which is a redelivery of the diſtreſs by the Sheriff by the courſe of the Law to the party be any diſſeiſin of the Rent ſervice? Littleton doth here yield the true reaſon, becauſe that by the reſcue, and by the ſuing of the Replevin, the Lord is diſturbed of the mean by the which he ought to have and come to his Rent, viz. of the diſtreſs. Bract. lib.4.fol.161.204. Britton fol.108. Fleta lib.4. cap.1.

And ſo it is of an Incloſer, for he that diſturbs a man of the mean diſſeiſeth him of the thing it ſelf. (e) As the turning of the whole ſtream that runs to a Mill is a diſſeiſin of the Mill it ſelf. (e) 9 Aſſ. 19. Mirror ch.2. Sect.15. Brit. fo.108.114. 118. 141.

So it is if a man be diſturbed to enter and manure his Land; (f) this is a diſſeiſin of the Land it ſelf: for, Qui adimit medium dirimit finem: and, Qui obſtruit aditum deſtruit commodum. (g) and therefore where it is ſaid that a man ſhall not be puniſhed for ſuing of writs in the Kings Court, be it of right or wrong, it is regularly true; but it faileth in this ſpecial caſe of the Writ of Replevin, for the cauſe aforeſaid. (h) But Denier is no diſſeiſin of a Rent ſervice, without Reſcous or Reſiſtance. (f) 26 Aſſ 17. 3 E.4.2. per Littl. 49 E.3.14. b. (g) F.N.B 42.g. 22 E.3. 15. 43 Aſſ.40. 43 E.3.20. faux judg.10. 8 E.4.215. per Moyle. 1 R.3.19. (h) 3 E.3.75. 8 H.6.11.

Sect.

Sect. 238.

Britton ubi ſupra. Fleta lib. 4. cap. 1.

¶ *Sont 4. cauſes de diſſeiſin de Rent Charge.* And you may add a fifth, viz. Reſiſtance to diſtrein, Counterpleading, and Vouching a Record, and faile thereof, as hath been ſaid before.

¶ ET ſont 4. cauſes de diſſeiſin de rent charge, ſcilicet, Reſcous, Replevin, Encloſure, & Denier. Car Denier eſt un diſſeiſin de Rent charge, come eſt avantdit de rent Secke.

AND there be four cauſes of diſſeiſin of a Rent charge, *ſcz.* Reſcous, Replevin, Incloſure, and Deniall. For Deniall is a diſſeiſin of a Rent Charge, as is ſaid before of a Rent Secke.

14 E. 4. 4. 35 H. 6. 7. 3 Aſſ. 8. 10 E. 3. 9. 40 E. 3. 24. 3 H. 6. 35. 3 E. 3. 75. 29 Aſſ. 31. 39 Aſſ. 4. 40 Aſſ. 3. 13 E. 1. Aſſ. 404. 3 Aſſ. 8. 8 H. 6. 11. 18 E. 3. Aſſ. 78.

¶ *Denier.* Deniall is a diſſeiſin of a Rent Charge, aſwell as of a Rent-ſecke, albeit he may diſtrein for the Rent Charge, aſwell as for a Rent ſervice. Nota, That when Books ſay that a detainer of a Rent Charge or Secke is a diſſeiſin. it muſt be intended upon a demand made.

If there be two Joyntenants, and the Grantee of a Rent charge diſtrein for the rent, and one of them make Reſcous, they are both diſſeiſors, for a diſtreſs for the Rent is a demand in Law, and then the Non-payment is a denial and a diſſeiſin, but he that made the Reſcous is only the Diſſeiſor.

Sect. 239.

49 E. 3. 15. 29 Aſſ. 5. 36 Aſſ. 7. 10 E. 3. 19. 33 H. 6. 5. 35 H. 6. 7. b.

¶ THE reaſon wherefore Incloſure is a diſſeiſin of a Rent ſecke, is becauſe the Grantee cannot come upon the land to demand it.

¶ ET deux ſont cauſes de diſſeiſin de Rent Secke, ceſtaſcavoir, denier & encloſure.

AND there be two cauſes of diſſeiſin of a Rent ſecke, that is to ſay, Deniall and Incloſure.

Sect. 240.

(*) Fleta lib. 1. cap. 42. 49 E. 3. 14. 49 Aſſ. 5. 29 Aſſ. 49.

¶ *Forſtalle.* (*) Foreſtallamentum, ſignifieth Obtruſionem viæ vel impedimentum tranſitus, &c.

¶ *Ove force & arms,* vi & armis.

(i) Vide ſect. 431.

Force, vis, in (i) the Common Law is moſt commonly taken in ill part, and taken for unlawfull violence; for, Maximè pace ſunt contraria vis & injuria. And therefore Britton ſaid well, ſpeaking in the perſon of the King, Nous volons que tours gents pluis, uſeant judgement que force. Arma, Arms, in the Common Law ſignifieth any thing that a man ſtriketh or hurteth

¶ ET il ſemble que il y ad un auter cauſe de diſſeiſin de touts les trois ſervices avantdits; ceſtaſcavoir, ſi l'Seignior ſoit en alant a la terre tenus de luy pur diſtreiner pur le Rent arere, & le Tenant, ceo oyant, luy encounter, & luy forſtala la voy obeſque force & armes, ou luy menace en tiel forme que il ne oſaſt

¶ AND it ſeemeth that there is another cauſe of diſſeiſin of all the three ſervices aforeſaid; that is, if the Lord is going to the Land holden of him for to diſtrein for the Rent behind, and the Tenant hearing this, encountreth with him, and foreſtalleth him the way with force and arms, or menaceth him in ſuch form, that he

vener a ſa terre pur diſtreiner p̄ ſon rent arere, pur doubt de mort ou mutilation de ſes membres, ceo eſt un diſſeiſin, pur ceo que le Seignior eſt diſturbe de le mean per que il doit venir a ſon rent. Et iſſint eſt, ſi per tiel forſtalmēt ou menace celuy q̄ ad un rent charge ou rent ſecke eſt forſtalle, ou ne oſa venir a la terre a demander le rent arere, &c.

dare not come to the Land to diſtrain for his Rent behind, for doubt of death or bodily hurt, this is a diſſeiſin, for that that the Lord is diſturbed of the mean whereby he ought to come to his rent. And ſo it is, if by ſuch foreſtalling or menacing he that hath Rent charge or Rent ſeck is foreſtalled, or dare not come to the Land to aſk the rent behind, &c.

Littl. (k) Omnes illos dicimus armatos qui habent cum quo nocere poſſunt. Telorum autem appellatione omnia in quibus ſinguli homines nocere poſſunt accipiuntur. Sed ſi quis venerit ſine armis, & ipſi concertationi ligna ſumpſerit, fuſtes, & lapides, talis dicetur vis armata: ſed ſi quis venerit cum armis, armis tamen ad dejiciendum non uſus fuerit, & dejecerit, vis armata dicitur eſſe facta; ſufficit enim terror armorum ut videatur armis dejeciſſe. Item. Armorum quædam ſunt cultionis, (& quod quis ob tutelam corporis ſui vel ſui juris fecerit, juſtè feciſſe videtur) quædam pacis & Juſtitiæ; quædam perturbationis pacis, & injuriæ; quædam uſurpationis rei alienæ. Again, Armorum quædam ſunt moliuæ, & quædam quæ faciunt Bruſuram, &c. Arma verò & lapides Bruſuram, ordei, & jeus, &c. To conclude this, it is truly ſaid, that Armorum appellatione non ſolùm ſcuta & gladii & galeæ continentur, ſed & fuſtes & lapides; as the Poet ſaith.

(k) Bracton lib.4. f. 162. & lib. 3. fol. 144. Fleta lib. 4. cap. 4.

Jamque faces & ſaxa volant, furor arma miniſtrat. Virgil. 1. Æneid.

Sed vim vi repellere licet, modò ſit moderamine inculpatæ tutelæ; non ad ſumendam vindictam, ſed ad propulſandam injuriam.

¶ *Pur doubt de mort & mutilation de ſes membres.* For it muſt not be Vagus & vanus timor, ſed talis qui cadere poſſit in virum conſtantem, & non in hominem vanū & metriculoſum; talis enim debet eſſe metus qui in ſe continet mortis periculum, & corporis cruciatum. Littleton here ſaith it muſt be for fear of death, * or mutilation of members. Et nemo tenetur exponere ſe infortuniis & periculis. And therefore a foreſtallment ſaith ſuch a menace is ſufficient, not only (ſaith Littleton) of a rent ſervice, but alſo of a Rent charge and Rent ſeck. Thus do all the diſſeiſins of a Rent that our Author ſpeaks of. Wherefore (l) where a diſſeiſin ſhall be by way of admittance of the owner of the rent. And Littleton doth make this bearing reaſon in caſe of foreſtallment, becauſe the Lord is diſturbed of the mean by which he ought to come to his Rent, wherefore there hath been ſpoken ſufficient before, as well in caſe of the Rent charge and Rent ſeck, as of the Rent ſervice.

Bracton lib.4. fe. Britton fol. 25. E. iij. Fleta lib. 3. cap. 5. * See of this in the Chapter of Deſcents, 49 E. 3. 14. 49 Aſſ. 5. 29 Aſſ. 49. &c.

(l) Vide Sect. 589.

¶ *&c.* Of the (&c.) in the end of this Section, and what is implyed therin, ſufficient hath been ſpoken before.

Now hath Littleton ſpoken of remedies for the recovery of the arrerages of Rents. But ſince Littletons time a right profitable ſtatute * in the 32 year of H. 8. hath been made for the recovery of arrerages of Rents in certain caſes where there lay no remedy at the Common Law, and given further remedy in ſome caſes where at the Common Law there was ſome remedy, which ſtatute hath been well and beneficially expounded, and thereupon 8. things are to be obſerved. Firſt, when Littleton wrote, the heirs, Executors, or Adminiſtrators of a man ſeiſed of a Rent for life, Rent charge, Rent ſeck, or Fee farm in fee ſimple or fee Tayle, had no remedy for the arrerages incurred in the life of the owner of ſuch rents. But now a double remedy is given to the Executors or Adminiſtrators for payment of debts, &c. viz. either to diſtrein, or to have an action of debt.

* 32 H.8. cap. 37.

Lib.4. fol. 49, 50. Oſnels caſe. 40 E. 3. Execution 98. 45 E.3. lib. 71. 9 H. 6. 43. 14 H 8. 20. 19 H. 6. 43. 34 H. 6. 20. 32 E. 3. Det. 99 H. 7. 17. 29 E. 3. Juriſdiction 22.

2. That the preamble of the ſtatute concerning Executors or Adminiſtrators of Tenant for life is to be intended of Tenant pur auter vie, ſo long as, ceſtuy que vie liveth, who are alſo holpen by the ſaid double remedy: but after the eſtate for life determined, his Executors or Adminiſtrators might have had an action of debt by the Common Law, but they could not have diſtreyned.

distreined, which now they may do by force of this Statute, for in that point it adderh (m) another remedy then the Common Law gave.

(m) 23 Eliz. Dier 373.

3. If a man make a Leafe for life or lives, or a gift in Tail reſerving a Rent, this is a Rent ſervice within this Statute.

4. The diſtreis is the more plain and certain Remedy then the action of debt, for the action of debt muſt be brought againſt them that took the profits when the Rent came behind, or againſt their Executors or Adminiſtrators, but the diſtreis may be taken upon the land, be it either in the Tenants own hands, or in the hands of any other that claims by or from him, (that is by interpretation under him) by purchaſe, gift, or deſcent, and theſe words; Claiming only by and from him, are to be underſtood claiming only from or under him by purchaſe, gift or deſcent, and not paramount or above him, as the Lord by Eſcheat claimeth not under the Tenant; by purchaſe, gift, or deſcent, but by reaſon of his Seigniory which is a Title paramount.

26 E. 3. 64. 11 H. 4. fol. ultimo. Ognels caſe, ubi ſupra & Lib. 7. fol. 39. b. Lillingtons caſe.

5. If there be Lord and Tenant, and the Rent is behind, and the Lord grant away his Seigniory, and dieth, the Executors ſhall have no remedy for theſe Arrerages, becauſe the Grantor himſelf had no remedy for them when he dyed in reſpect of his Grant, and the Statute is (in like manner as the Teſtator might or ought to have done) Et ſic de ſimilibus; for the act giveth no remedy when the Teſtator hath diſpenced with the Arrerages, or had no remedy when he dyed.

6. If the Tenant make a leaſe for life, the Remainder for life, the Remainder in fee, the Tenant for life pays not the Rent due to the Lord, the Lord dyeth, the Tenant for life dyeth, the Executors cannot diſtrein upon him in Remainder, becauſe he claims not by or from the Tenant for life. And ſo it is of a Reverſion for the cauſe aforeſaid. But if a man grant a Rent charge to A. for the life of B. and letteth the lands to C. for life, the remainder to D. in fee, the Rent is behind by divers years; B. dyeth, and after C. dyeth, A. may diſtrein D. in Remainder for all the Arrerages, by the latter branch of the Statute of 32 H. 8. and this diverſity riſeth upon the ſeveral pennings of the former branch and of this latter, which you may read in the Statute it ſelf, and ſo expounded and adjudged (o) in Edridges caſe, and the latter clauſe giveth the leſſer Eſtate the greater Remedy.

(o) Lib. 5. fol. 118. Edridges caſe.

7. For the Arrerages of a Nomine pœnæ, and for relief, or for aid, Pur faire fits chivaler, or Pur file marier this Statute * giveth no Remedy. For, for the Arrerages of the Nomine pœnæ, the Grantee himſelf may have an action of debt, and conſequently his Executors or Adminiſtrators, and yet the Nomine pœnæ as an incident to the Rent ſhall deſcend to the heir. For relief the Lord cannot have an action of debt but diſtrein, but his Executors by (p) the Common Law ſhall have an action of debt; for it is no Rent but a caſual improvement of ſervices for the ſaid Lands. If the Lord doth levy them, the ſon and the daughter reſpectively ſhall have an action of debt againſt the Executors or Adminiſtrators of the Lord; and if they have nothing, then againſt the heir, but this is by the Statute (q) of W. 1. Note, that all manner of Arrerages of Rents iſſuing out of a freehold or inheritance, whether they be in money, or corn, or cattel, fowl, pepper, comin, victual, ſpurs, gloves, or any other profit to be delivered or yielded, and whether they be annual, or every two, or three or four years, or the like, are within this Statute, but works-days, or any corporal ſervice, or the like, are not within this Statute.

* 40 E. 3. 3. b. 11 H. 4. 85. 14 E. 4. 4. 20 H. 7. 1. 2. 28 H. 8. Dyer 24.

(p) 34 E. 1. Avowry 233. F. N. B. 122. 10 H. 6. 11. 11 H. 6. 8. Mich. 32 H. 8. Rot. 429. Leak's Caſe. Ognels caſe, ubi ſupra. 3 E. 3. Debt 157.

(q) W. 1. cap. 36. F. N. B. 32. 120.

8. A feme ſole is ſeiſed of a Rent in fee, &c. which is behind and unpaid, ſhe taketh husband, the Rent is behind again, the wife dyeth, the husband by the Common Law ſhould not have the Arrerages grown due before the marriage, but for the Arrerages become due during the coverture, the husband might (r) have an action of debt by the Common Law, but now this Statute * by a particular clauſe giveth the husband the Arrerages due before marriage, and the ſaid double remedy for the ſame, and that he may diſtrein for the Arrerages grown due during the coverture, ſo it giveth him that which he could not have before, and further remedy for that which the Common Law gave him, and ſo it hath been (ſ) adjudged.

(r) 26 E. 3. 64. 10 H. 6. 11. * 22 H. 6. 29. F. N. B. 121.

The Biſhop of (t) Norwich had the firſt fruits of all the Clergy within the Dioceſs at every avoydance; the Church became void, and another Parſon became Incumbent, who gain the Biſhop parcel of his firſt fruits according to the taxation of the Church, and for the reſt he had a day given unto him to pay it; the Biſhop dyed, the reſidue was not paid; whereupon his Executors brought an action of debt; and it is adjudged, that no action doth lie, becauſe it is a meer ſpiritual thing, and no lay contract, and therefore the Court had no juriſdiction to hold plea of it. I have been the longer in the expoſition of the ſaid Statute, for that it is a general caſe, and doth concern moſt part of the Subjects of England.

(ſ) Hil. 27 Eliz. Rot. 457. inter Sharpe & Pike. Vide Ognels caſe, ubi ſupra.

(t) 19 E. 3. Juriſdict. 22.

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Finis Libri ſecundi.

THE

THE THIRD BOOK
Of the First Part of the
INSTITUTES
Of the
LAWES of ENGLAND.

CHAP. I. *Of Parceners* *Sect.* 124.

¶ PArceners ſont en deux maners, ceſt aſcavoir, parceners ſolonque l' courſe del common Ley, & parceners ſolonque cuſtom. Parceners ſolonque le courſe del common ley ſont, lou home ou feme ſeiſie de certain terres ou tenements en fee ſimpl', ou en taile, nad iſſue forſque files & debie, & les tenements deſcendont a les iſſues, & les files entront en les terres ou tenements iſſint

PArceners are of two ſorts (to wit) Parceners according to the courſe of the Common Law, and Parceners according to the cuſtome. Parceners after the courſe of the Common Law are where a man or woman ſeiſed of certain Lands or Tenements in fee ſimple or in taile, hath no iſſue but daughters & dieth and the Tenements deſcend to the Iſſues, and the Daughters enter into the Lands or Tene-

¶ OUr Author having treated in his two former books firſt of eſtates of lands and tenements, and in his ſecond book of Tenures wherby the ſame have been holden: Now in his third book doth teach us diders things concerning both of them, as firſt the qualities of their eſtates. 2. In what caſes the entry of him that right hath may be taken away. 3. The remedies, and in what caſes the ſame may be prevented, or avoided. 4. How a man may be barred of his right for ever, and in what caſes the ſame may be prevented or avoided. For the firſt, he having ſpoken of ſole eſtates, divideth the quality of eſtates into Individed, and Conditional. Individed, into Coparcenary, Joyntenancy, and Tenancy in common. Coparcenary, into Parceners by the Common

Common Law, and Parceners by the Cuſtome, and he beginneth his third book with Parceners claiming by deſcent, which coming by the Act of Law, and right of blood, is the nobleſt and worthieſt means whereby lands do fall from one to another. Conditional, into conditions expreſs or in deed, and conditions in Law. Conditions in deed, into Gages, which he diuideth into Vadia mortua, and Vadia viua: Vadia mortua, ſo called, becauſe either money or land may be loſt: and Viua, becauſe neither money nor land can be loſt, but both preſerued. Then ſpeaketh he of Deſcents, whereby the entry of him that right hath may be taken away.

Vide Sect. 385.

And next to that the remedy how to prevent the ſame, viz. by continual claim. Then he teacheth how a man having a defeaſible, or an imperfect eſtate, may perfect and eſtabliſh the ſame by three means, viz. by Releaſe, by Confirmation, and Attournment where that is requiſite.

diſcendus a eux, donques els ſont appels Parceners, & quant a files els ſont forſque un heire a lour anceſtor. Et els ſont appel Parceners, p ceo que per le brief q̄ eſt appel Briefe de Partitione faciend' la ley eux voet coherc̄ q̄ partitiō ſerra fait enter eux. Et ſi ſont deux files al queux les terres diſcendont, donque els ſont appels deux Parceners. Et ſi ſont trois files, donque els ſont appels trois Parceners, Et ſi quater files, quater Parceners, & iſſint ouſter.

ſo deſcended to them, then they are called Parceners, and be but one heir to their Anceſtor. And they are called Parceners, becauſe by the Writ which is called *Breve de partitione faciendа*, the Law will conſtrain them, that partition ſhall be made among them: and if there be two daughters to whom the land deſcendeth, then they be called two Parceners; and if there be three daughters, they be called three Parceners; and if four daughters, four Parceners, and ſo forth.

Having ſpoken of a Deſcent, being an action in Law which taketh away an entry, he doth then ſpeak of a diſcontinuance, the act of the party, whereby the entry of them that have that right ſhall be taken away. And next unto that he teacheth in what caſe the ſame may be auoided by Remitter. After he had treated of deſcents and diſcontinuances, which take away entries, but bar not Actions. Laſtly, he ſetteth forth the learning of Warranties: (a curious and cunning kind of learning, I aſſure you) whereby both Entry, Action, and Right may be barred, and the remedies how they may be prevented before they fall, and in what caſes they may be auoyded after they be fallen. And thus have you an account of the thirteen ſeueral Chapters of his third book. And now this method being underſtood, let us here what our Author will ſay unto us concerning Parceners.

¶ *Et quant a files els ſont forſque un heire a lour* (a) *anceſtor.* This is falſe printed, for the original is, Et quinque files els ſont, els ſont parceners, & ſont forſque un heir a lour auncestor.

(a) Bract. lib. 2. fo. 66. 71. &c. & 76. &c. & lib. 5. fol. 433. Brit. fol. 58. 112. 128. 183. 184. 185. 189. 193. Flet. lib. 5. cap. 9. lib. 6. cap. 47. Glanv. lib. 7. cap. 3. & lib. 13. cap. 11.

¶ *Parceners.* (q) Jus deſcendit quaſi uni hæredi propter juris unitatem, ſicut ſunt plures filiæ, &c. & ubi omnes ſimul & in ſolidum hæredes ſunt, plures Cohæredes ſunt quaſi unum corpus, propter unitatem juris quod habent. Whereupon it followeth, that albeit where there be two Parceners, (c) they have moieties in the Lands deſcended to them, yet are they both but one Heir, and one of them is not the moiety of an Heir, but both of them are but unus heres.

(b) Bract. lib. 2. fol. 66. 76. Fleta ubi ſupra. Brit. ubi ſup. & Statute de Hibern.

(c) Vide ſect. 8. verſ. fin.

And it is to be obſerved, that there is a diverſity between a deſcent which is an act of the Law, and a purchaſe, which is an act of the party. (d) For if a man be ſeiſed of lands in fee, and hath iſſue two daughters, and one of the daughters is attainted of felony; the Father dyeth, both daughters, being alive: the one moiety ſhall deſcend to the one daughter, and the other moiety ſhall eſcheat.

(d) Fleta lib. 5. cap. 9. Fleta lib. 6. cap. 47.

But if a man make a leaſe for life, the remainder to the right heirs of A. being dead, who hath iſſue two daughters, whereof the one is attainted of Felony; in this caſe ſome hath ſaid, that the remainder is not good for a moiety, but void for the whole, for that both the daughters ſhould have been (as Littleton ſaith) but one heir.

A man

A man may make a gift in tail, reſerving two ſhillings rent to himſelf during his life, and if he die, his heir within age, then reſerving a rent of twenty ſhillings to his heirs for ever, he dieth, having iſſue two daughters, the one of full age, the other within age; in this caſe the Donee ſhall hold by fealty only, inſomuch as the one daughter as well as the other is his heir, and both of them (as Littleton ſaith) make but one heir, ergo his heir is not within age, neither is his heir in that caſe of full age. But if the reſervation had been, and if he die, his heir neither being within age, nor of full age, &c. in this caſe the reſervation had been good, and if it doth not begin in his next heir, it ſhall never begin as this caſe is, for that the precedency is not performed. (c) But yet if one of them be of age, and the other within age, ſhe ſhall have her age and other priviledges and advantages that an heir within age ſhall have, and when they are Demandants, for the homage of the one, the Paroll ſhall demurr againſt them both. (f) Sunt autem plures participes quaſi unum corpus in eo quod unum jus habent & oportet quod corpus ſit integrum, & quod in nulla parte ſit defectus. And when the right heir doth claim by purchaſe, he muſt be (ſay they) a compleat right heir in judgment of Law. And therefore if lands be given to a man and to the heirs females of his body, and he hath iſſue a ſon and a daughter, and dieth, the daughter ſhall have the land by deſcent: but if a remainder be limited to the heirs females of the body of J. S. and he hath iſſue a ſon and a daughter, his daughter ſhall never take it by purchaſe, for that ſhe is not heir female of the body of J. S. becauſe he hath a Son.

(c) Temps E. 1. Age 128. 8 E.2. Judgement 240. 30 E.3. 7. 44 E.3. Age 47. 26 Aſſ. 65. 13 E.3. Age 51. 28 Aſſ. 22. 19 Aſſ. 25. 57. 34 H.6. 4 Aſſ. 17.

(f) Flet. lib. 5. c. 9. & l. 6. cap. 47.

If a man give lands to another, and to the heirs males of his body, upon condition, that if he die without heir female of his body, that then the Donor ſhall re-enter, this condition is utterly void; for he cannot have an heir female, ſo long as he hath an heir male.

And as they be but one heir, and yet ſeveral perſons, ſo have they one entire freehold in the land as long as it remains undivided in reſpect of any ſtrangers Præcipe. (g) But between themſelves to many purpoſes they have in judgment of Law ſeveral freeholds, for the one of them may infeoff another of them of her part, and make livery. (h) And the Coparcenary is not ſevered or divided by Law, by the death of any of them; for if one die, her part ſhall deſcend to her iſſue, and one Præcipe ſhall lie againſt them, for they ſhall never joyn as heirs to ſeveral Anceſtors in any action Anceſtrel, but when one right deſcends from one Anceſtor: and then propter unitatem Juris, though they be in ſeveral degrees from the common Anceſtor, yet they ſhall joyn. But the iſſues of ſeveral Coparceners, becauſe ſeveral rights deſcend, ſhall never joyn as heirs to their Mothers, and when they have recovered, a writ of Partition lieth between them.

(g) 10 E.4. 17 E.3.46.

(h) 37 H.6.8. 19 H.6.43.

Vide Sect.313.

For example, (i) If a man hath iſſue two daughters, and is diſſeiſed, and the daughters have iſſue and die, the iſſues ſhall joyn in a Præcipe, becauſe one right deſcends from the Anceſtor, and it maketh no difference whether the common Anceſtor being out of poſſeſſion died before the daughters, or after; for that in both caſes they muſt make themſelves heirs to the Grandfather which was laſt ſeiſed, and when the iſſues (k) have recovered, they are Coparceners, and one Præcipe ſhall lie againſt them. And likewiſe if the iſſues of two Coparceners which are in by ſeveral deſcents be diſſeiſed, they ſhall joyn in aſſiſe. But in the ſame caſe, if the two daughters had been actually ſeiſed, and had been diſſeiſed, after their deceaſes the Iſſues ſhall not joyn, becauſe ſeveral rights deſcended to them from ſeveral Anceſtors: and yet when they have ſeverally recovered, they are Coparceners, and one Præcipe lieth againſt them, and a releaſe made by one of them to the other is good. And ſo note a diverſity, inter deſcenſum in capita, & in ſtirpes.

(i) 7 E.3.30,34. 48 E.3. 14. 24 E.3.13. F.N.B.221. 35 H.6.23. 37 E.3.89. 31 H.6.14. b.

(k) 37 H.6.8. 9 E.4.23. & 42 E. 3. 16, 17.

And the Statute of Glouceſter cap. 6. made Anno 6. Edw. 1. ſpeaketh, Si home murge, &c. If a man dieth: So as that Statute extendeth not but where one dieth and hath divers heirs, whereof one is Daughter, Brother or Siſter, Nephew or Neece, and the others be in a further degree, all their heirs from henceforth ſhall have their recovery by a writ of Mordauncеſtor. And this ſeemeth to me to be the Common Law, for Bracton who writ before this Statute, ſaith, In caſu cum ſit aſſiſa mortis anteceſſor' conjungenda cum conſanguinitate, non erit poſtea recurrendum ad Præcipe de Conſanguinitate, ſed ad aſſiſam mortis, quia perſona quæ propinquior eſt, & facit Aſſiſam, & trahit ad ſe perſonam & gradum remotiorem ut ubi potius procedat Aſſiſa quam Præcipe, quia id quod eſt magis remotum, non trahit ad ſe quod eſt magis junctum, ſed è contrario in omni caſu. And herewith agreeth the moſt of our (m) Books: and two Coparceners ſhall have a writ of Ayel, and by their count ſuppoſe the common Anceſtor to be Grandfather to the one, and great Grandfather to the other.

(l) Bracton lib. 4. 234. b. Britton fol. 181, 182. & 178. 204. Fleta lib. 5. cap. 1. & 2. & 9. in fine.

(m) 19 E.3. tit. Joyndre in Action 31. 7 E.3.30. & 34. 27 E.3.89. 48 E.3.14. 24 E.3.13. F.N.B. 221. Regiſter.

I have been the longer herein for that this Inheritance of Coparceners is the rareſt kind of Inheritance that is in the Law.

Vide 32 E.1. Joyndre in Action 34. 13 E.3. lib. 29 Temps E.2. lib. 35. 30 E.1. lib. 36. 25 H. 6. 23.

Furthermore it is to be obſerved, That herein alſo in caſe of Coparceners (n) ſometimes the deſcent is in ſtirpes, (viz.) To Stocks or Roots, and ſometime in Capita, To Heads. As if a man hath iſſue two daughters and dieth, this deſcent is in Capita, viz. That every one ſhall inherit alike, as Littleton here ſaith. But if a man hath Iſſue two daughters, and

(n) Bracton lib. 2. 66. Britton cap. 71. Fleta lib. 5. cap. 9. & 6. cap. 47.

the eldeſt daughter hath iſſue three daughters, and the youngeſt one daughter; all theſe four ſhall inherit, but the daughter of the youngeſt ſhall have as much as the three daughters of the eldeſt, Ratione ſtirpium, and not Ratione capitum, for in judgment of Law every daughter hath a ſeveral Stock or Root.

Alſo if a man hath iſſue two daughters, and the eldeſt hath iſſue divers ſons and divers daughters, and the youngeſt hath iſſue divers daughters, the eldeſt ſon of the eldeſt daughter ſhall only inherit, for this deſcent is not in Capite, but all the daughters of the youngeſt ſhall inherit, and the eldeſt ſon is Coparcener with the daughters of the youngeſt, and ſhall have one moiety, (viz.) his Mothers part: ſo that men deſcending of daughters may be Coparceners, as well as women, and ſhall jointly implead and be impleaded, as is aforeſaid.

(o) If there be two Coparceners, and the one bring a Rationabili parte, or a Nuper obiit againſt the other, the Defendant claim by purchaſe, and diſclaim in the bloud, the Plaintiff ſhall have a Mordaunceſtor againſt her as a ſtranger for the whole.

(o) 20 E.2. Nuper ob. 14. F.N.B. 197. 7 E.3.13.

¶ *Parceners ſont en deux manners.* Here Littleton doth divide Parceners, and herewith do agree the ancient books in Law.*

* Bract. lib.2.fo.66.71, &c. Brit.c.71. Fleta lib.5. ca.9.

¶ *Et ils ſont appels parceners, &c* Parceners, Participes, Et dicuntur Participes quaſi partis capaces, ſive partem capientes; quia res inter eas eſt communis, ratione plurium perſonarum. This Tenancy in the ancient books of Law is called Adæquatio, and ſometime Familia hirciſcunda, an Inheritance to be divided, and many times Parceners are called Coparceners.

¶ *Breve de Participatione facienda.* This is falſe printed, and ſhould be, De partitione facienda, a Writ whereby the coparceners are compelled to make partition. Item eſt alia Actio mixta, quæ dicitur Actio Familiæ hirciſcundæ, & locum habet inter eos qui communem habent hæreditatem, &c. Et locum habet, ut videtur, inter Cohæredes, ubi agitur de proparte ſororum, vel inter alios ubi res inter partes & Cohæredes dividi debeat, ſicut ſunt plures ſorores, quæ ſunt quaſi unus hæres, vel inter plures fratres, qui ſunt quaſi unus hæres, ratione rei quæ diviſibilis eſt inter plures maſculos, &c.

(p) Regiſt. Orig. 76. 316. Regiſt. Jud. 80. Brit. ubi ſup. Flet. ubi ſup. Bract. ubi ſup. & l. 5. fo. 443. b.

¶ *Des terres & tenements.* It is to be conſidered of what Inheritances daughters ſhall be Coparceners, and how and in what manner partition ſhall be made between them. Wherein it is to be obſerved, That of Inheritances ſome be entire, and ſome be ſeveral; again, of entire, ſome be diviſible, and ſome be indiviſible. And here it appeareth by Littleton, That Parceners take their appellation, becauſe they are compelled to make partition by writ of Partitione facienda; where note, that Littleton alloweth well to find out the true derivation of words, as often hath been and ſhall be obſerved.

If a Villain deſcend to two Coparceners, this is an entire Inheritance, and albeit the Villain himſelf cannot be divided, yet the profit of him may be divided, one Coparcener may have the ſervice one day, one week, &c. and the other another day or week, &c. and for the ſame reaſon a woman ſhall be endowed of a Villain, as before it appeareth in the Chapter of Dower. Likewiſe an Advowſon is an entire Inheritance, (q) and yet in effect the ſame may be divided between Coparceners, for they may divide it to preſent by turns.

(q) 13 E.2. tit. Quar. Imp. 170. 17 E.3.38. Fleta li.5. ca. 9. Mirror cap.2. Sect.17.

A Rent charge is entire, and againſt common right, (r) yet may it be divided between Coparceners, and by act in Law the Tenant of the land is ſubject to ſeveral diſtreſſes, and partition may be made before ſeiſin of the Rent.

(r) 44 E.3. tit. Partic. 6. & tit. Avowry 75. 2 H.6. fol. 11.

Entire inheritances not diviſible, we find divers in our books, and ſome inheritances that are diviſible, and yet ſhall not be parted or divided between Coparceners, as hereafter ſhall appear.

(ſ) If a man have reaſonable Eſtovers, as Houſebote, Heybote, &c. appendant to his freehold, they are ſo entire as they ſhall not be divided between Coparceners. (t) So if a Corody in certain ſhall be granted to a man and his heirs, and he hath iſſue divers daughters, this Corody ſhall not be divided between them, but of a Corody certain, Partition may be made.

(ſ) 2 E.2. tit. Dower 123. (t) 17 E.2. nuper ob. 12. 16 E.2. lib. 111 5 Mariæ Dier 153.

(u) Homage and Fealty cannot be divided between Coparceners. (w) So a Piſcary incertain, or a common ſans nombre, cannot be divided between Coparceners, for that would be a charge to the Tenant of the Soil. (x) The Lord Montjoy ſeiſed of the Manner of Canford in fee, did by Deed indented and inrolled, bargain and ſell the ſame to Brown in Fee, in which Indenture this clauſe was contained, Provided always, and the ſaid Brown did covenant and grant to and with the ſaid Lord *Montjoy*, his heirs and aſſigns, that the Lord Montjoy, his Heirs and Aſſigns might dig for Ore in the Lands (which were great waſte) parcell of the ſaid Manner, and to dig turfe alſo for the making of Allome. And in this caſe three points were reſolved by the Judges. Firſt, that this did amount to a grant of an intereſt and Inheritance to the Lord Montjoy, to digg, &c. Secondly, that notwithſtand-

(u) 17 E. 3. 72. (w) 13 E.2. Quar. Imp. Fleta lib.5. cap. 9. (x) Mich. 24 & 25 Eliz. inter Comitem de Huntingdon & Seignior Montjoy.

ing

ding this grant. Brown his heirs and assigns might dig also, and like to the case of Common Sauns nomber. Thirdly, that the Lord Mountjoy might assign his whole interest to one, two, or more; but then if there be two or more, they could make no division of it, but work together with one stock, neither could the Lord Mountjoy, &c. assign his interest in any part of the waste to one or more, for that might work a prejudice and a surcharge to the Tenant of the land; and therefore if such an incertain Inheritance descendeth to two Coparceners, it cannot be divided between them. Vide 5 Mariæ Dier. 159.

But then it may be demanded, what shall become of these Inheritances, The answer is, that is appeareth in our Books, that regularly (y) the eldest shall have the reasonable Estovers, Common Piscary, Corody incertain, &c. and the rest shall have a contribution, that is, an allowance of the value in some other of the inheritance, and so of the like. But what if the common Ancestor left no other inheritance, to give any thing in allowance, what contribution or recompence shall the younger Coparceners have? It is answered, that if the Estovers, or Piscary, or Common, &c. for a time, and the other for the like time: as the one for one year, and the other for another, or more or lesser time, whereby no prejudice can grow to the owner of the soil. Or in the case of the Piscary, one may have one fish, and the other the second, &c. or the one may have the first draught, and the second the second draught, &c. And if it be of a park, one may have the first beast, and the second the second, &c. And if of a Mill, one to have the Mill for a time, and the other the like time, or the one one toll dish, and the other the second, &c. And this appeareth to be the ancient Law, for it is said, (z) Sunt aliæ res hæreditariæ quæ veniunt in partitionem, quæ cum dividi non possunt conceduntur uni, ita quod aliæ coheredes alibi de communi hæreditate habeant ad valorem, sicut sunt vivaria, piscariæ, parci, vel saltem quod partem habeant pro defectu, sicut secundum piscem, tertium vel quartum; vel secundum tractum, tertium vel quartum. Item in parcis secundam, tertiam aut quartam. (y) 2 E.2. dower 123. 13 E.2. Quar. Imp. 170. Fleta ubi supra. vide Mirror ca.2. Sect. 17. (z) Bracton lib.2.76. Britton cap. 71,72. Fleta lib.5. cap. 9.

But now let us turn our eye to inheritances of Honour and Dignity. And of this there is an ancient Book case (*) in 23 H.3. tit. partition 18. in these words: Note, if the Earldom of Chester descend to Coparceners, it shall be divided between them as well as other Lands, and the eldest shall not have this Seigniory and Earldom entire to her self, Quod nota, adjudged per totam Curiam. By this it appeareth, that the Earldom (that is, the possessions of the Earldom) shall be divided; and that where there be more daughters then one, the eldest shall not have the Dignity and Power of the Earl, that is, to be a Countesse. What then shall become of a Dignity? The answer is, (a) that in that case the King, who is the Soveraign of Honour and Dignity, may for the incertainty confer the Dignity upon which of the Daughters he please. And this hath been the usage since the Conquest, as it is said. (*) 23 H.3. tit. Part 18. (a) 3 H.3. tit. Prescription.

But if an Earl that hath his Dignity to him and his heirs dieth, having issue one daughter, the Dignity shall descend to the daughter; for there is no incertainty but onely one daughter, so the Dignity shall descend unto her & her posterity, as well as any other inheritance, and this appeareth by many presidents, and by late judgment given in Sampson Leonards case who married with Margaret the onely sister and heir of Gregory Fines Lord Dacre of the South, and in the case of William Lord Ros.

But there is a difference between a Dignity or name of Nobility, and an office of Honour. For if a man hold a Manor of the King to be high Constable of England, and die, having issue two daughters, the eldest daughter taketh husband, he shall execute the office solely, and before marriage it shall be executed by some sufficient deputy; and all this was resolved by all the Judges of England, in the case of (b) the Duke of Buckingham. But the Dignity of the Crown of England is without all question descendible to the eldest daughter alone, and to her posterity, and so it hath been declared by Act of Parliament: (*) For Regnum non est divisibile. And so was the descent of Troy. (b) 11 Eliz. Dier 283. the Duke of Buckingham's Case. (*) 25 H.8. cap.22.

Præterea sceptrum Ilione quod gesserat olim
Maxima natarum Priami.——— Virgil.1. Eneid.

(b) If a Castle that is used for the necessary defence of the Realm, descend to two or more Coparceners, this Castle might be divided by Chambers and Rooms, as other Houses be, but yet for that it is Pro bono publico & pro defensione Regni, it shall not be divided; for as one saith, Propter jus gladii dividi non potest. And another saith, (*) Pur le droit del espee que ne soeffre division en aventure que la force del Realme ne defaille pax taunt. But Castles of habitation for private use, that are not for the necessary defence of the Realm ought to be parted between Coparceners as well as other houses, and wives may thereof be endowed, as hath been said in the Chapter of Dower. (b) Bract. lib.2. fol.76. Fleta lib.5. cap.9. (*) Britton 186. 187. Vide Sect. 36.

If there be two Coparceners of certain Lands with warranty, and they make partition

of the Land, the warranty ſhall remain, becauſe they are compellable to make partition. (c) But otherwiſe it was of Joyntenants at the Common Law, as ſhall be ſaid hereafter in his proper place. (d) Thomas de Eberſton ſeiſed of the Mannor of Eberſton, with the Foreſt of Pickering, had kept, time out of mind, a Woodward for keeping of the woods parcell of that Mannor, and had the bark of all the Trees felled in the ſaid Woods by any of the Foreſters of that Foreſt as belonging to his Mannor (which he could not have without a Preſcription.) Thomas of Eberſton infeoffed two of the ſaid Mannor, between whom partition was made, ſo as one of them had the one half in ſeverality, and the other the other half. Robert Wyeme afterwards had the one half, and Thomas Thurniſe the other, and they in the Eire of Pickering claimed to keep a Woodward within the ſaid Woods, and the barke aforeſaid, and the truth hereof and the uſage being ſpecially found by the Foreſters, Verderers, and Regarders, Willoughby, Hungerford, and Hanbury, Juſtices Itinerants within that Foreſt, gave judgment as followeth: Ideo conſideratum eſt quod prædict' Robertus & Thomas habeant Woodwardum & Cortleem in boſco prædicto de quercubus prædictis ſibi & hæredibus ſuis in perpetuum. Salvo ſemper jure, &c.

(c) 29 E. 3. garrantie 70.
(d) Itin. Pickering 8 E. 3. Rot. 34.

Sect. 242.

¶ Auxy ſi home ſeiſie de tenements en fee ſimple ou en fee taile, deby ſauns iſſue de ſon corps engender, & les tenements diſcendont a ſes ſoers, els ſont Parceners, come eſt avantdit. Et en meſme le manner, lou il nad pas ſoers, mes les tenements diſcendont a ſes aunts, els ſont Parceners, &c. Mes ſi home nad forſque un file, el ne poit eſtre dit parcener, mes el eſt appelle file & heire, &c.

ALſo if a man ſeiſed of Tenements in Fee ſimple or in Fee-tail, dieth without iſſue, of his body begotten, and the Tenements deſcend to his Siſters, they are Parceners, as is aforeſaid. And in the ſame manner, where he hath no Siſters, but the Lands deſcend to his Aunts, they are Parceners, &c. But if a man hath but one Daughter, ſhe ſhall not be called Parcener, but ſhe is called Daughter and Heir, &c.

¶ *Ou en Fee taile.* This muſt be intended of an eſtate Tail made to the Father and to the heirs of his body, for otherwiſe if the ſtate Tail were made to a man and to the heirs of his body, his ſiſters cannot inherit. And not onely Daughters ſhall be Coparceners, but Siſters, Aunts, great Aunts, &c.

¶ *File & heire, &c.* Here by (&c.) is implied Siſter and heir, Aunt and heir, great Aunt and heir, and ſo upward.

Sect. 243.

¶ By this Section, and the (&c.) in the end of it, it is to be underſtood, that there are two kind of partitions between Coparceners, the one in deed or expreſſe, and the other in Law or implicite. Of partitions in deed or expreſſe, ſome be voluntary, whereof Littleton enumerates foure Manners, and one compulſory, that is, by Writ of Partition.

¶ Et eſt alcaboir, que partition enter parteners poit eſtre fait en divers manners. Un eſt quãt els agreeont de faire partition, & font partition de les Tenements, ſicome ſi ſoyent deux parteners

AND it is to be underſtood, that partition may be made in divers manners. One is, when they agree to make partition, and do make partition of the tenements. As if there be two Parceners to divide between them

a devider enter eux les Tenements en deux parts, chescun part per soy en severaltie, & de egal value. Et si sont 3. parceners a devider les tenemts en trois parts per soy en severaltie, &c.

the Tenements in two parts, each part by it self in severalty, and of equall value. And if there be three Parceners, to divide the Tenements in three parts by it self in severalty, &c.

The first partition in dev between coparceners, is that which Littleton here speaketh of Quant els agreeont & font partition de les tenements, &c. chescun part per soy en severalty & de egal value, &c. If Coparceners make partitions at full age, and unmarried, and of sane memorie, of lands in fee, it is good and firm for ever, albeit the values be unequal; but if it be of lands entailed, or if any of the Parceners be of non sane memorie, it shall bind the parties themselves, but not their issues, unless it be equal. Or if any be Covert, it shall bind the husband, but not the wife or her heirs. Or if any be within age, it shall not bind the Infant, as shall be fully hereafter: The second partition followeth in the next Section. And here the (&c.) implieth further, and if there be four Parceners, then four parts; if five, five parts, and so forth. It further implieth, that all this must be in severalty; wherof and with what limitations this is to be understood, it hath been declared before. Vide Sect. 241.

Sect. 244.

¶ UN auter partition est, a ellier per agreément enter eux, certaine de lour amies, de fair partition des terres ou tenemts en le forme avantdit. Et en tiels cases apres tiel partition, le eign file, primerment eslieta un des parres illint dividés, que el doit aver pur sa part, & donques le second file procheín apres luy auter part, & donques l'tierce soer auter part, donques la 4. auter part, &c. si illint soit que sotent plusors soers, &c. si ne soit auterment agrée enter eux. Car il poit, estre agrée enter eux, que un avera tiels tenemts, & un auk tiels tenemts, &c. sans ascun tiel primer election, &c.

ANother partition there is, *viz.* to choose by agreement between themselves certain of their friends to make partition of the Lands or Tenements in form aforesaid. And in these cases after such partition, the eldest daughter shall choose first one of the parts so divided which she will have for her part, and then the second daughter next after her another part, and then the third Sister another part, then the fourth another part, &c. if so be that there be more Sisters, &c. unlesse it be otherwise agreed between them. For it may be agreed between them, that one shall have such Tenements, and another such Tenements, &c. without any primer election.

¶ *Donques le 4. auter part, &c.* Here the (&c.) implieth the 5th sister, and after her the 6th, and so forth. 31 Ass. 26.

¶ *Car il poit estre agree enter eux que un avera tiels tenements & un auter tiels tenements, &c.*

Here by this (&c.) is implied divers rules of Law proving the conclusion of Littleton in this Sect. viz. Modus & conventio vincunt legem. Pacto aliquid licitum est, quod sine pacto non admittitur. Quilibet potest renunciare juri pro se introducto. But with this limitation, that these rules extend not to any thing that is against the Commonwealth, or common right. For, Conventio privatorum non potest publico juri derogare.

Sect.

Sect. 245.

¶ *Enitia pars.* It is called in old Books * Æiſnetia, which is derived of the French word Eiſne for eldeſt, as much to ſay as the part of the eldeſt; for Bracton ſaith, Quod Eiſnetia ſemper eſt præferenda propter privilegium ætatis, ſed eſto quod filia primogenita, relicto nepote vel nepte in vita patris vel matris deceſſerit, præferenda erit ſoror antenata tali nepoti vel nepti quantum ad Eiſnetiam, quia mortem parentum expectant. And herewith agreeth Fleta alſo, Quod nota: whereby it appeareth that Enitia pars is perſonal to the eldeſt, and that this prerogative or privilege deſcendeth not to her iſſue, but the next eldeſt ſiſter ſhall have it. (f) And here is a diverſity to be obſerved betwæn this caſe of the partition in deed by the act of the parties, (for there the privilege of election of the eldeſt daughter ſhall not deſcend to her iſſue.) And where the Law doth give the eldeſt any privilege without her act, there that privilege ſhall deſcend. As if there be divers Coparceners of an Advowſon * and they cannot agree to preſent, the Law doth give the firſt preſentment to the eldeſt, and this privilege ſhall deſcend to her iſſue, nay her Aſſignæ ſhall have it, and ſo ſhall her husband that is Tenant by the curteſy have it alſo.

¶ *Donques il eſt dit leigne ſoer eſlier pluis darreine, &c.* By this and the, &c. in the end of this Section is implied, the rule of Law is Cujus eſt diviſio, alterius eſt electio. And the reaſon of the Law is for avoiding of partiality.

Ipſæ etenim leges cupiunt ut Jure regantur.

which might apparently follow if the eldeſt might both divide and chooſe. Now followeth the third partition in Deed.

* Bracton lib. 2. 77. Fleta lib. 5. cap. 9. Britton cap. 72.

(f) 45 E. 3. fines 41. 19 E. 3. quar. Imp. 59. 18 E. 2. ibid. 176. 5 H. 5. 10. 38 H. 6. 9. Doct. & Stud. 116, 117. Vide Bract. 238, 249. (*) 5 H. 7. 8. 34 H. 6. 40. 11 H. 4. 54. 20 E. 3. quar. Imp. 63. 34 E. 3. Ibid. 198. 15 E. 3. Dar. Preſentment 11. 17 E. 3. 20, 21. 21 E. 3. 21. F. N. B. 32.

¶ ET la part que leigne ſoer ad eſt appelle en Latin Enitia pars. Mes ſi les parteners agreont, que leigne ſoer ferra partition de les tenements en le forin abandit, & ſi ceo el fait, donque il eſt dit que leigne ſoer eſlieſt pluis darreine pur ſa part, & apres chaſcun de ſes ſoers, &c.

AND the part which the eldeſt ſiſter hath, is called in Latine *Enitia pars.* But if the Parceners agree that the eldeſt ſiſter ſhall make partition of the Tenements in manner aforeſaid, and if ſhe do this, then it is ſaid that the eldeſt ſiſter ſhall chooſe laſt for her part, and after every one of her ſiſters, &c.

Sect. 246.

¶ UN auter partition ou allotment eſt, ſicome ſoient quater parteners, & apres le partition de les Terres fait, chaſcun part del terre ſoit per ſoy ſolement eſcript en un petit eſcrobet, & ſoit covert tout en cere, en le manner dun petit pile, iſſint que nul poit veir leſcrobet, & donque ſoient les 4. piles de cere mis en un bonnet a garder en les maines dun indifferent home, &

ANother partition or allotment is, as if there be four Parceners, and after partition of the Lands be made, every part of the Land by it ſelf is written in a little ſcrowl, and is covered all in wax in manner of a little ball, ſo as none may ſee the ſcrowle, and then the four balls of waxe are put in a hat to be kept in the hands of an indifferent man, and then the eldeſt Daughter ſhall firſt

donques

donques leigne file primerment metra ſa maine en le bonnet, quel prendra un pile de cere obelque leſcrobet deins ūn le pile pur ſa part, & donqꝫ le ſecond ſoer metra ſa maine en le bonnet & prendra un auter, le tierce ſoer le 3. pile, & le 4. ſoer le 4. pile, &c. & en ceo cas covient cheſcun de eux luy tener a ſa chance & allotment.

put her hand into the hat, and take a ball of Wax with the ſcrowle within the ſame ball for her part: And then the ſecond ſiſter ſhall put her hand into the hat, and take another, the 3. ſiſter the 3. ball, and the 4. ſiſter the 4. ball, &c. And in this caſe every one of them ought to ſtand to their chance and allotment.

Allotment. Of this partition by Lots, ancient Authors * write, that in that caſe Coparceners Fortunam faciunt judicem: and Littleton here termeth it Chance, for in the end of this Section he ſaith, that in this caſe every one of them ought to hold her ſelf to her chance: and of this kind of diviſion, you ſhall read in holy Scripture, where it is ſaid, Dedi vobis poſſeſſionem quam dividetis ſorte.

* Fleta lib. 5. cap. 5. Bracton lib. 2. 75. Britton cap. 72. Vide Numbers 26. 52. 53. 54. Of diviſion by lots.

The &c. in the end of this Section, implieth, that if there be more Coparceners, there muſt be more balls according to the number of Parceners.

Sect. 247.

¶ Item, un auter partition il y ad ſicome ſont quater Parceners, & ils ne voilent agreer a partition deſire fait enter eux, donque lun poit aver bꝛe De partitione facienda, envers les autres trois: ou deux ď eux poient aver bꝛe De partitione facienda envers les autres deux: ou trois de eux poient aver bꝛe De partitione facienda envers le quart, a lour election.

Alſo, there is another Partition. As if there be four Parceners, and they will not agree to a Partition to be made between them, then the one may have a Writ of *Partitione facienda* againſt the other three, or two of them may have a Writ of *Partitione facienda* againſt the other two; or three of them may have a Writ of *Partitione facienda* againſt the fourth, at their election.

¶ Here followeth the fourth Partition in Deed. Littleton having ſpoken of voluntary partitions, or partitions by conſent: now he ſpeaks of a Partition by the compulſory means of Law, where no Partition can be had by conſent. Now of what inheritance partition may be made by the Writ of Partitione faciendâ, may partly appear by that which hath been ſaid. Moreover, it is to be obſerved, that the words of the Writ De partitione facienda, be, * Quod cum eadem A. & B. ſimul & pro indiviſo teneãnt tres acras terræ cum pertinen' &c. And note, that this word (Tenet) in a writ, doth always imply a Tenant of a Freehold. And therefore (g) if one Coparcener maketh a Leaſe for years, yet a Writ of Partition doth lie.

* 3 E. 3. 47, 48.

(g) 21 E. 3. 57. F.N.B. 62. g. 28 H. 6. 2. 11 H. 4. 3. 4 H. 7. 10. b.

But if one or both make a Leaſe for life, a writ of Partition doth not lie between them, becauſe Non iſimul & pro indiviſo tenent, they do not hold the freehold together, and the writ of partition muſt be againſt the Tenant of the freehold. (h) If one Coparcener diſſeiſe another, during this diſſeiſin a writ of partition doth not lie between them, for that Non tenent iſimul & pro indiviſo.

(h) 4 H. 7. 9. 11 Aſſ. 23.

But there be other partitions in deed then here have been mentioned. (i) For a Partition made between two Coparceners, that the one ſhall have and occupy the land from Eaſter, untill the firſt of Auguſt only in ſeverality by himſelf, and that the other ſhall have and occupy the land from the firſt of Auguſt untill the Feaſt of Eaſter, yearly to them and their heirs; this is a good partition. Alſo if two Coparceners have two Mannors by deſcent

(i) Temps E. 1. Partic. 21. F.N.B. 62. I.

and

and they make partition, that the one ſhall have the one Mannor for one year, and the other the other Mannor for this year, and ſo alternis vicibus to them and their heirs, this is a good Partition. The ſame Law is if the partition be made in form aforeſaid, for two or more years, and each Coparcener have an eſtate of Inheritance, and no Chattel, albeit either of them alternis vicibus have the occupation but for a certain term of years.

Of Partitions in Law, ſome be by act in Law without judgment, and ſome be by judgment, and not in a writ de partitione facienda. And of theſe in order.

(k) 36 H. 6. 7.

(k) If there be Lord, three Coparceners Meſnes, and Tenant, and one Coparcener purchaſe the Tenancy, this is not only a partition of the Meſnalty, being extinct for a third part but a diviſion of the Seigniory paramount, for now he muſt make ſeveral avowries.

(l) 37 H. 6. 8. 43 E. 3. 1.

(l) If one Coparcener make a Feoffment in fee of her part, this is a ſeverance of the Coparcenary and ſeveral writs of Præcipe ſhall lie againſt the other Coparcener and the Feoffee.

(m) 17 E. 3. 14. 15.

(m) If two Coparceners be, and each of them taketh husband and have iſſue, the wifes die, the Coparcenary is divided, and here is a partition in Law.

(n) 12 E. 3. Judgm. 162. 7 Aſſ. 10. 7 E. 3. 49. 10 Aſſ. 17. 12 Aſſ. 5. 17. 10 E. 3. 40. 43. 28 Aſſ. 35. 23 Aſſ. 18. 20 E. 3. Aſſ. 62. 3 E. 3. 48. b. 19 H. 6. 45. 7 H. 6. 4. 3 E. 4. 10.

(o) Bract. l. 4. fol. 216. b.

(p) 3 E. 3. 48. 21 R. 2. tit. Nuper ob. 22. 4 H. 7. 10. 30 E. 1. Nup. ob. 18. F. N. B. 9. b.

(q) Britton fol. 112. 2.

(r) Lib. 6. fol. 12. & 13. Morrices caſe accorde.

(n) If two Coparceners be, and one diſſeiſe the other, and the Diſſeiſee bringeth an Aſſiſe, and recover, it hath been ſaid, That ſhe ſhall have judgment to hold her moiety in ſeveralty. And this ſeemeth (ſay they) very ancient, and thereupon vouch Bracton, (o) Si res fuerit communis locum habeni, poterit communi dividendo judicium. And (p) ſo (ſay they) if the one coparcener recover againſt another in a Nuper obiit, or a Rationabili parte, the judgment ſhall be, That the Demandant ſhall recover and hold in ſeveralty. But Britton is to the contrary, for he ſaith, (q) Et ſi aſcun des Parceners ſoit enget ou diſturbe de ſa ſeiſin per ſes auters Parceners, un, ou pluſors, al diſſeiſee viendra aſſiſe per ſeveral pleint ſur les Parceners & recovera, mes, nemy a tenet en ſeveralty, mes en common ſolonque ceo que avant le fiſt, &c. (r) And this ſeemeth reaſonable, for he muſt have his judgment according to his Plaint, and that was of a moiety, and not of any thing in ſeveralty, and the Sheriff cannot have any warrant to make any partition in ſeveralty or by Meets and Bounds.

Sect. 248.

Bract. fol. 66. &c. Brit. 71. &c. Brit. cap. 72. Fleta lib. 5. cap. 9.

NOte the firſt judgment in a writ of Partition, whereof Littleton here ſpeaketh is, Quod partitio fiat inter partes prædictas de tenementis prædictis, cum pertinentiis, after which Judgment, by this &c. viz. Tenements, &c. is implyed, That a Writ ſhall be awarded to the Sheriff, Quod aſſumptis tecum 12, liberis & legalibus hominibus de Vicineto tuo, per quos rei veritas melius ſciri poterit, in propria perſona tua accedas ad tenementa prædicta cum pertinentiis & ibidem per eorum ſacrament' in præſentia partium prædictarum per te præmuniend' ſi intereſſe voluerint, prædicta tenement cum pertinen' per ſacrament' bonorum & legalium hominum prædictorum habito reſpectu ad verum valorem earundem in duas partes æquales partiri & dividi, unam partem partium illarum, &c.

This laſt, &c. in this Section is evident.

Ockam ca. Quid ſit liber judiciarius. 40 E. 3. 45. 9 Aſſ. 2. 8 Aſſ. 35. 49 E. 3. 2. Regiſt. F. N. B. 16.

¶ *Judgment.* Judi-

¶ ET quant judgement ſerra done ſur tiel briefe, le judgment ſerra tiel, q̄ partition ſerra fait enter les parties, & que le Vicount en ſon proper perſon alera a les terres & tenements, &c. & que il per l' ſerement de xii. loyalx homes de ſon Bailiwicke, &c. ſerra partition enter les parties, & que lun part de meſmes les Terres & Tenements ſoyent aſſignes al plaintif, ou a lun des plaintifs, & un auter part a un auter Parcener, &c. nient ſea-

AND when Judgement ſhall be given upon this Writ, the judgment ſhall be thus, That partition ſhall be made between the parties, and that the Sheriff in his proper perſon ſhall go to the lands and Tenements, &c. and that he by the oath of 12. lawful men of his Bailiwick, &c. ſhall make partition between the parties, and that one part of the lands & tenements ſhall be aſſigned to the pl', or to one of the plaintifs, and another part to another Parcener, &c. not making mention in

ſant

ſant mention en le judgement de leigne ſoer pluis q̄ ỏ puiſſi.

the judgement of the eldeſt ſiſter, more then of the youngeſt.

cium eſt quaſi, juris dictum, ſo called, becauſe ſo long as it ſtands in force, pro veritate accipitur, and cannot be contradicted: And thereupon antiquity called that excellent Book in the Exchequer, Domeſday, Dies Judicii, Sicut enim diſtricti & terribilis examinis illa noviſſima ſententia nulla tergiverſationis arte valet eludi, &c. ſic ſententia ejuſdem libri inficiari non poteſt vel impune declinari, ob hoc nos eundum librum judiciarium nominamus, &c. quod ab eo, ſicut à prædicto judicio non licet ulla ratione diſcedere. By Littleton it appeareth, That the formes of Judgement, Pleas, and other legal proceedings, do conduce much to the right underſtanding of the Law, and of the reaſon thereof, as here Littleton rightly collecteth, upon the form of the judgement that the Sheriff ſhall deliver to them ſuch parts as he thinks good, and that the eldeſt Coparcener ſhall have no election when partition is made by the Sheriff. And it is to be obſerved, that there be two Judgements in a writ of Partition: Of the former, Littleton ſpeaketh in this place. And when partition is made by the oath of twelve men, and aſſignment and allotment thereof, and ſo returned by the Sheriff, then the latter judgement is Ideo conſideratum eſt, quod partitio prædicta firma & ſtabilis in perpetuum teneatur, and this is the principal judgement. (q) And of the other, before this be given, no Writ of Error doth lie.

(q) Lib. 11. fol. 40. Hill. 39 Eliz. Rot. 327. in Banke le Roy inter Anne Counteſſe de War. & le Seignior Berkley.

¶ *Shireve.* Is a word compounded of two Saxon words, viz. Shire, and Reve. Shire, Satrapia, or Comitatus, cometh of the Saxon Verb Shiram, i. Partiri, for that the whole Realm is parted and divided into Shires: And Reve is præfectus or præpoſitus; ſo as Shireve is the Reve of the Shire, præfectus Satrapiæ, Provinciæ, or Comitatus. And he is called Præfectus, becauſe he is the chief Officer to the King within the Shire; for the words of his Patent be, Commiſſimus vobis cuſtodiam Comitatus noſtri de, &c. And he hath a threefold cuſtody, triplicem cuſtodiam, viz. Firſt, Vitæ Juſtitiæ, for no ſuit begins, and no proceſſe is ſerved but by the Sheriff. Alſo he is to return indifferent Juries for the tryal of mens lives, liberties, lands, goods, &c. Secondly, Vitæ legis, he is after long ſuits, and chargeable to make execution, which is the life and fruit of the Law. Thirdly, Vitæ Reipublicæ, He is Principalis conſervator pacis within the County, which is the life of the Commonwealth, Vita Reipublicæ par.

He is called before, Sect. 234. Viſcount, in Latine Vicecomes, i. Vice Comitis, that is, inſtead of the Earle of that County, who in antient time had the regiment of the County under the King. For it is ſaid in the Mirror * That it appeareth by the ordinance of ancient Kings before the Conqueſt, that the Earls of the Counties had the cuſtody or guard of the Counties; and when the Earles left their cuſtodies or guards, then was the cuſtody of Counties committed to Viſcounts, who therefore (as it hath been ſaid) are called Vicecomites, and Ockam, cap. Quid centur', &c. Porro Vicecomes dicitur, quod vicem Comitis ſuppleat.

Vid. the ſecond part of the Inſtitutes, W. 1. c. 10.
* Mirror cap. 1. Sect. 3.
Ockam cap. Quid Centur. &c.

Marculphus ſaith, This Office is, Judiciaria dignitas. Lampridius, That it is, Officium dignitatis. Forteſcue ſaith, Quod Vicecomes eſt nobilis officiarius. And ſee there and obſerve well his honourable and ſolemn election and creation at this day. But to confirm all that hath been ſaid touching this point, and to conclude the ſame, among the Laws of Edward the Confeſſor, I find it thus recorded Verum quod modo vocatur Comitatus, olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabantur conſulatus, & qui modo vocantur Vicecomites, tunc temporis Viceconſules vocabantur; ille vero dicebatur Viceconſul qui conſule abſente ipſius vices ſupplebat in jure & in foro. Herein many things are worthy of obſervation: Firſt, for the antiquity of Counties. Secondly, That which is called Comitatus, the Romans more Latinely called Conſulatum. Thirdly, whom the Saxons afterwards called (as hath been ſaid) Shreve or Earle, the Romans called Conſul. Fourthly, That the Sheriff was deputy of the Conſul or Earle, and therefore the Romans called him Viceconſul, as we at this day call him Vicecomes. Fifthly that the Sheriff in the Romans time, and before, was a miniſter to the Kings Courts of Law and Juſtice, and had then a Court of his own, which was the County Court, then called Curia Conſulatus, as appeareth by theſe words, Ipſius vices ſupplebat in jure & in foro. Sixthly that this Realm was divided into Shires and Counties, and thoſe Shires into Cities, Boroughs, and Towns by the Britains: So that King Ælfreds diviſion of Shires and Counties, was but a renovation or more exact deſcription of the ſame. Laſtly, the conſequence that will follow upon theſe things, being ſo ancient (as in the time of, and before the Romans) the ſtudious Reader will eaſily collect. And afterwards, fol. 135. amongſt the Laws of the ſame King, it appeareth, that thoſe whom the Saxons ſometimes called (and now we call) Ældermen, or Earles, the Romans called Senatores, Et ſimiliter olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabantur Senatores, qui poſtea temporibus Saxonum vocabantur Aldermani, non propter ætatem, ſed propter ſapientiam & dignitatem, cum quidam adoleſcentes eſſent, juriſperiti tamen & ſuper hoc experti.

Forteſcue cap. 24.
12 R. 2. Cap.
Lambert fol. 129. 12.
Cæſar. Polichro Huntington Polidor. inter leges Mulmucii. Hooker lib. 2.

¶ *De*

De ſon Byaliwicke. It appeareth before, that the Enqueſt muſt be De vicinero, of the place where the lands do lye, and not generally De Balliva tua. By this it appeareth, that the Sheriff is Ballivus, and his county called Balliva, and therefore it is good to be ſæn what Ballivus originally ſignified, and whereof it is derived.

Flet. lib. 2. cap. 67.

Baylife is a French word, and ſignifies an Officer concerning the adminiſtration of Juſtice of a certain Province: and becauſe a Sheriff hath an office concerning the adminiſtration of Juſtice within his County or Bayliwicke, therefore he calleth his County Balliva ſuâ: for example, when he cannot find the Defendant, &c. he returneth, Non eſt inventus in Balliva mea, I have heard great queſtion made, what the true expoſition of this word Ballivus is. In the ſtatute of Magna Charta cap. 28. the letter of that ſtatute is, Nullus Ballivus de cætero ponat aliquem ad legem manifeſtam nec ad juramentum ſimplici loquela ſua ſine teſtibus fidelibus ad hoc inductis. And ſome have ſaid, That Ballivus in this ſtatute ſignifieth any Judge, for the Law muſt be waged any made before the Judge: and this ſtatute (ſay they) extends to the Courts of Common Pleas, Kings Bench, &c. For they muſt bring with them Fideles teſtes, &c. and ſo hath been the uſage to this day.

Bract. lib. 3. tract. 2. cap. 33. nu. 3. Idem lib. 3 fol. 121. b.

Bract. lib. 3. 156. b. Brit. fol. 56. Fleta lib. 2. cap. 63.

But I have peruſed a very ancient and learned reading upon this ſtatute, and the Reader taketh it, That at the Common Law before this ſtatute, he that would make his Law in any Court of Record, muſt bring with him Fideles teſtes. And this opinion herein is warranted by Glanvil, who wrote in the Reign of Henry the ſecond. But the Reader holdeth, That in the Courts which were not of Record, as the County Court, the Hundred Court, the Court baron, &c. there the Defendant without any faithful witneſſes, might before this ſtatute have made his Law, for remedy whereof this act was made: and therefore (ſaith he) the ſtatute extendeth to the Judges of ſuch Courts as are not of Record. In 10 H. 4. it is holden, That if a Lord that hath a Franchiſe in a Leet, doth not enquire of things enquirable, and puniſh them, the Sheriff ſhall enquire in his Turne, Et ſi le Vicount ne faire, en ſon Torne, Baylife le Roy, inquirer' quant il vient, ou autrement ſerra enquiſe per Juſtice in Eire. Whereby Baylife le Roy is underſtood Juſtice le Roy: And in the Mirror * it is holden, That the ſtatute doth extend to every Juſtice, Miniſter of the King, Steward, &c. and all comprehended under this word Baylife.

Glanv. lib. 1. cap. 9.

10 H. 4. 4.

* Mirror cap. 5. Sect. 2. Vide Bract. fol. 409. Fleta lib. 2. cap. 63. 56.

The chief Magiſtrates in divers ancient Corporations are called Bayliffs, as in Ipſwich, Yarmouth, Colcheſter, &c. And Baylife in French is Dicœcetes, Nomarcha, in Engliſh a Bayliff, or Governour. But of this thus much ſhall ſuffice.

Sect. 226.

¶ *South ſon Seale, &c.* Note, the Partition made and delivered by the Sheriff and Jurors ought to be returned into the Court under the Seale of the Sheriff and the ſeales of the twelve Jurors, for the words of the Judicial Writ of partition, which doth command the Sheriff to make partition, are, Aſſumptis tecum 12, &c. (ſo as there muſt be 12) & partitionem inde, &c. ſcire facias Juſticiariis, &c. ſub ſigillo tuo, & ſigillis eorum per quorum Sacramentum partitionem illam feceris, &c. And this is the reaſon whereof in this caſe the partition which they make upon oath, ought to be returned under their ſeals: and the reaſon of that is for the more ſtrengthning of the partition

Brit. fol. 185. b. acc. Bract. lib. 2. fol. 71. &c. Fleta lib. 5. cap. 9.

¶ Et de la partition que l'Vicount ad iſſint fait il ſerra notice as Juſtices ſouth ſon Seale, & les Seales, de cheſcun les 12. &c. Et iſſint en cē caſe poies veier q̄ leigne ſoer navera my la primer election, mes le Vicount luy aſſignera ſa part que el avera, &c. Et poit eſtr̄ que le Vicount doit aſſigner̄ primerm̄t un part a le plus puiſn̄ &c. & darreinement al eigne, &c.

AND of the partition which the Sheriff hath made, he ſhall give notice to the Juſtices under his Seal, and the Seals of every of the 12, &c. And ſo in this caſe you may ſee that the eldeſt ſiſter ſhall not have the firſt election, but the Sheriff ſhall aſſigne to her her part which ſhe ſhall have, &c. And it may be that the Sheriff will aſſigne firſt one part to the youngeſt, &c. and laſt to eldeſt, &c.

tition by the 12, and that the Sheriff should not return what partition he would. Now after all this, this (&c.) viz. 12. &c. doth imply, that the principal judgment upon the partition so returned is, Ideo consideratum est per Curiam quod partitio firma & stabilis in perpetuum teneatur, the later two (&c.) are evident. Lib.11. fol. 40. in Medcalfs case.

Sect.250.

¶ Et nota q̄ partition per agreement perenter parceners, poit estre fait per la ley enter eux auxy bien p̄ baroll sans fait, come per fait.

And note, that partition by agreement between parceners may be made by Law between them, as well by paroll without Deed, as by Deed.

¶ Here it appeareth that (r) not only Lands and other things that may pass by Livery without Deed, but things also that do lye in grant, as Rents, Commons, Advoulons, and the like, that cannot pass by words without deed, whether they be in one County or in several Counties, may be parted and divided by paroll without Deed. (s) But a partition between Joyntenants is not good without Deed, albeit it be of Lands, and that they be compellable to make partition by the statutes of 31 H. 8. cap. 10. and 32 H. 8. cap. 32. because they must pursue that Act by writ de partitione facienda, and a partition between Joyntenants without writ remains at the Common Law which could not be done by Paroll. And so it is, and for the same reason of Tenants in Common. But if two Tenants in Common be, and they make partition by Paroll, and execute the same in severalty by Livery, this is good and sufficient in Law. And therefore where Books say, that Joyntenants made partition without Deed, it must be intended of Tenants in Common, and executed by Livery.

(r) 3 E.4.9,10. 9 E.4.38. 11 H.4.3. 9 H.4. partition 13. 21 E.3.38.

(s) Sect.250. 3 H.4.1. 19 H.6.25. 28 H.6.2. 3 E.4.9,10. 47 E.3.22. 47 Ass.8. 19 H.6.1.17 E.3.46. 30 Ass.8. Lib.4.fol. 73.li.6. fol.12,13. 2 H.7.5. Dier. 18 Eliz.358.31 H.8. Dier 46. 2 Eliz.Dier 179.28 H.8. Diet 29. 1 Mar. Dier 98.

Nota, between Joyntenants there is a two-fold privity, viz. in estate and in possession: between Tenants in Common there is privity only in possession, and not in estate: but Parceners have a three-fold privity, viz. in estate, in person, and in possession.

Sect.151, & 152.

¶ Item si deux meales descendont a deux Parceners, & lun meale vault per ans 20. s̄ lauter forsq̄ 10. s̄. per an, en cest cas partition poit estre fait enter eux en tiel forme, cestascavoir q̄ un parcener avera lun meale, & que lauter parcener avera lauter meale, & celuy q̄ aver le meale q̄ est de value de 20. s̄. & ses heires, payeront un ānuall rent

Also if two Meses descend to two Parceners, and the one Mease is worth twenty shillings *per annum*, and the other but tenne shillings *per annum*, In this case partition may be made between them in this manner, to wit, the one Parcener to have the one Mease, and the other Parcener the other Mease. And she which hath the Mease worth 20. shillings *per annum*, and her heires, shall pay

¶ *PER Paroll.* Nota, Here (t) a Rent may be granted for oweity of partition without Deed, eben as a Rent in case of a Lease for years, for life, or a gift in Tail may be reserved without Deed. and so may a Rent be assigned to a woman out of the land whereof she is Dowable, &c. without Deed, but albeit an exchange for Lands in the same County may be without Deed; yet (u) a Rent granted for egality of the same exchange cannot be without Deed: and the cause of the difference is apparent, for Coparceners are in by descent, and compellable to make partition.

(t) 8 E.3.16. 21 Ass.p.1. 21 E.3.38. 11 H.4.43.61. 45 E.3.21. 2 H.6.14. 21 H.6.11. 1 Mar. Dier 91.

¶ *Le Rent, &c.*

The same Law is of Common of Estovers, or a Corody, or a Common of

of paſture, &c, or a way granted upon the partition by the one Coparcener to the other. All which, and the like, albeit they lie in grant, yet upon the partition may they be granted without deed.

¶ *Iſſuant hors de meſme le meaſe, &c.* (x) For if it be granted out of other Lands then deſcended to the Coparceners, then there muſt be a Deed. (z) But if the Rent be granted generally (out of no land in certain) for owelty of partition, pro reſiduo terræ, it ſhall be intended out of the purparty of her that granteth it.

(a) If there be three Coparceners, and they make partition, & one of them grant twenty ſhillings per annum out of her part to her 2 ſiſters, and their heirs, for Egality of partition, the grantees are not joyntenants of this Rent; but the Rent is in nature of Coparcenary, and after the death of the one Grantee, the moiety of the Rent ſhall deſcend to her iſſue in courſe of coparcenary, and not ſurvive to the other, for that the rent doth come in recompence of the Land, and therefore ſhall enſue the nature thereof, and if the grant had been made to them two of a Rent of twenty ſhillings, viz. to the one ten ſhillings and to the other ten ſhillings, yet ſhall they have the Rent in courſe of Coparcenary, and joyn in action for the ſame.

(b) If one Coparcener be married, and for owelty of partition the husband and wife grant a rent to the other two out of the part of the Feme Covert, this partition being equal, ſhall charge the part of the Feme Covert for ever.

(c) If two Coparceners by Deed indented alien both their parts to another in fee rendring to them two and their heirs a Rent out of the Land; they are not joyntenants of this rent, but they ſhall have the rent in courſe of coparcenary, becauſe their right in the land out of which the rent is reſerved, was in coparcenary.

¶ *Purront diſtreiner de common droit, &c.* That is, (d) in this caſe the Law doth give a diſtreſs, leſt the Grantee ſhould be without remedy, for the which upon the partition ſhe hath given a valuable recompence in Land, which deſcended, &c. And ſo in the caſe of Dower above mentioned.

(x) 1 Mariæ Dier 91.

(z) 29 Aſſ. 23. 29 E. 3. 9. b. Pl. Com. 34.

(a) 15 H. 7. 14. 29 Aſſ. 23. 29 E. 3. 9. b.

(b) 29 Aſſ. 23. 29 E. 3. 9. 17 E. 3. 10.

(c) 38 E. 3. 26. b.

(d) 1 Mariæ Dier 91. 8 E. 3. 16. and other like books aboveſaid.

de 5 ſ̃ iſſuant hors de meſme le meaſe a lauter parcener, & a ſes heirs a touts jours pur ceo que cheſcun de eux avoit owelty en value.

a yearly rent of 5 ſhillings, iſſuing out of the ſame meaſe to the other Parcener, and to her heires for ever, becauſe each of them ſhould have equality in value.

Sect. 252.

¶ ET tiel partition fait per parol eſt aſſets bone, & meſme le Parcener q̃ avera le rent & ſes heires, purront diſtreiner de common droit, pur le rent en le dit meſe de le value de 20. s. ſi le rent de 5 s. ſoit aderere en alcun temps en quelconque mains q̃ meſme le meaſe devendra, coment que ne fuit unques alcun eſcripture de ceo fait enter eux ō tiel rent.

AND ſuch partition made by paroll is good enough, and that Parcener who ſhall have the rent and his heirs, may diſtrein of common right for the Rent in the ſaid meaſe, worth twenty ſhillings, if the rent of five ſhillings be behind at any time, in whoſe hand ſoever the ſame meaſe ſhall come, although there never were any writing of this made between them for ſuch a rent.

Sect. 253.

¶ TErres & Tenements, &c. Here (&c.) implyeth a Caution viz. that they be ſuch Lands

¶ EN meſm̃ l' maner eſt, ō touts maners ō t̃rs & tene-

IN the ſame manner it is of all manner of Lands and Tene-

ments

ments, &c. lou tiel rent eſt reſerve a un, ou a divers Parceners ſur tiel partition, &c. Mes tiel rent neſt pas rent ſerbice, mes eſt rent charge de common droit ewe & reſerve pur egaltie de partition.

ments, &c. where ſuch Rent is reſerved to one or to divers Parceners upon ſuch partition, &c. But ſuch Rent is not Rent ſervice, but a Rent charge of common right, had and reſerved for equality of partition.

and tenements out of which a Rent for egalitie of partition may be granted: whereof ſufficient hath been ſaid before.

¶ *Reſerve al un.* Here reſervation is taken for a grant, and if it be uſed upon the partition, doth amount in this caſe to a grant, which is worthy the obſervation.

Sect. 254.

¶ ET nota que nulles ſont appelles parceners p̄ le common ley, mes females, ou les heires de females que veignont a terres & tenemẽts p̄ deſcent. Car ſi ſoers purchaſe terres ou tenements, de ceo ils ſont appelles joyntenants, & nemy parceners.

AND note, That none are called Parceners by the Common Law, but females or the heirs of females which come to Lands or tenements by deſcent: for if ſiſters purchaſe lands or tenements, of this they are called Joyntenants, and not Parceners.

This needs no explanation.

Sect. 255.

¶ ITem ſi deux Parceners de tẽ en fee ſimple, font partition enter eux, & la part de un vault pluis q̄ le part d̄ lauter, ſi els fueront al temps de la partition de pleine age, ſ̄. de 21. ans, donq̄ la partition, touts dits demurrera, & ne ſerra unques defeat. Mes ſi les Tenements (dont els font partition) ſoyent a eux en fee taile, & le part que lun ad eſt

ALſo if two Parceners of Land in fee ſimple make partition between themſelves, and the part of the one valueth more then the part of the other, if they were at the time of the partition of full age, s. of 21. years, then the partition ſhall alway remain and be never defeated. But if the Tenements (whereof they make partition) be to them in fee taile, and the part of the one

¶ *Donques le partition touts dits demurrera, &c.* Hereby it appeareth, that the inequality of the value ſhall not impeach a partition made of lands in fee ſimple between coparceners of full age, no more then it ſhall do in caſe of an exchange. 9 H. 5. and other the Books aboveſaid.

¶ *Ils ſont concludes durant lour vies.* This inequal partition doth ſo conclude the Parceners themſelves, as ſhe that hath the unequal part, ſhall not avoid it during her life.

¶ *Concludes.* This word is derived of Con, and Claudo, and in this ſenſe ſignifieth to cloſe or ſhut up her mouth that ſhe cannot ſpeak to the contrary.

11 Ass. p. 23.

Husband and wife tenants in ſpecial taile of certaine Lands in fee have iſſue a daughter, the wife dieth, the Husband by a ſecond Wife hath iſſue another daughter, both the Daughters enter (where the eldeſt is only inheritable) and make partition, the eldeſt daughter is concluded during her life to impeach the partition, or to ſay that the youngeſt is not heir, and yet ſhe is a ſtranger to the tail, but in reſpect of privity in their perſons, the partition ſhall conclude; for a partition between meer ſtrangers in that caſe is void, but the iſſue of the eldeſt ſhall avoid this partition as iſſue in tail.

See after the Chapter of Garr.

(g) 21 E. 3. 34, 35. 2 E. 2. Baſtardy 19. 11 Aſſ. 23. 30 Aſſ. 7. 17 E. 3. 59.

(g) J. S. ſeiſed of lands in fee hath iſſue two daughters, Roſe and Anne, baſtards eigne, and Mulier puiſne, and dyeth. Roſe and Anne do enter and make partition, Anne and her heirs are concluded for ever.

melieux en annual value, que eſt la part le lauter, coment q̄ els ſont concludes durant lour vies a defeater la partition, uncore ſi le parcener que ad le meinder part en value ad iſſue & deby, iſſue poit diſagrær a la partition, & enter & occupier en common lauter part que fuit allotte a ſa Aunt, & iſſint lauter poit enter & occupier en common lauter part allotte a ſa ſoer, &c. ſi come nul partition uſt eſte fait.

is better in yearly value then the part of the other, albeit they be concluded during their lives to defeat the partition, yet if the Parcener which hath the leſſer part in value, hath iſſue and die, the iſſue may diſagree to the partition; and enter and occupy in common the other part which was allotted to her Aunt, and ſo the other may enter and occupy in common the other part allotted to her ſiſter, &c. as if no partition had been made.

Sect. 256.

42 Aſſ. 22. 8 E. 4. 4. 9 E. 3. 38. 15 E. 4. 20. F.N.B. 62. 20 Aſſ. 23. 9 H. 6. 5. 43 Aſſ. 14.

¶ *Els et lour barons.* Here it appeareth, that the wife muſt be party to the partition, and ſo are the Books to be intended that ſpeak of this matter.

¶ *Et defeatera la partition.* Note, the partition ſhall not be defeated for the ſurpluſage onely to make the partition equal, but here it appeareth, that it ſhall be avoided for the whole. But of this more ſhall be ſaid hereafter in this Chapter, Sectione 264.

(h) Vide 2 E. 2. Cui in vita 17.

(h) And though the partition be unequal, yet is not the partition void, but voidable; for if after the deceaſe of the Huſband, the wife entreth into the unequal part, and agreeth thereunto, this ſhall bind, and therefore Littleton

¶ Item ſi deux parceners de tenements en fee preigne barons, & els & lour barons font partition enter eux, ſi la part lun eſt meinder en annual value que la part lauter, durant les vies lour barons la partition eſtopera en ſa force. Mes coment que il eſtopera durant les vies les barons, uncore apres la mort le baron, celuy feme q̄ ad le meinder part poit enter en le part ſa

ALſo if two Parceners of Lands in fee take husbands, and they and their Huſbands make partition between them, if the part of the one be leſſe in value then the part of the other, during the lives of their husbands, the partition ſhall ſtand in its force. But albeit it ſhall ſtand during the lives of their Husbands, yet after the death of the Husband, that woman which hath the leſſer part may enter into ſoer

ſoer come eſt avantdit, & defeatera la partition.

her Siſters part as is aforeſaid and ſhall defeat the partition.

uſeth the word (Defeatera,) which proveth it to be voidable.

Sect. 257.

¶ MEs ſi le partition fait perenter les barons fuit tiel, que cheſcun part al temps dallotment fait, fuit de egal annual value, donque il ne poit apres eſtre defeat en tielx caſes.

BUt if the partition made between the Husbands were thus, that each part at the time of the allotment made, was of equall yearly value, then it cannot afterwards be defeated in ſuch caſes.

¶ *Perenter les barons.* This is miſtaken, for the original is Perenter eux, that is betwæn the Barons and Femes, and not as it is here, betwæn the Barons, therefore this error would be hereafter reformed.

¶ *Al temps del allotment.* Hereby it appeareth, that if the parts at the time of the partition be of equal yearly value, neither the wives nor their heirs ſhall ever avoid the ſame, and the reaſon hereof is, for that the husbands and wives were compellable by Law to make partition, and that which they are compellable to do in this caſe by Law, they may do by agreement without proceſs of Law. If the annual value of the land be equall at the time of the partition, and after become unequal by any matter ſubſequent, as by ſurrounding, ill husbandry, or ſuch like, yet the partition remains good. 9 H 6.5. and other the Books above above ſaid.

Judicis officium eſt, ut res, ita tempora rerum
Quærere, quæſito tempore tutus eris.

But if the partition be made by force of the Kings Writ, and judgment thereof given, it ſhall bind the Feme-coverts for ever, albeit the parts be not of equall annual value, becauſe it is made by the Sheriff by the Oath of twelve men by authority of Law. And the judgment is, that partition ſhall remain firm and ſtable for ever, as hath been ſaid. (a) But a partition in the Chancery, where one Coparcener is of full age, and ſueth Livery, and one other is within age and hath an unequal part allotted to her, this ſhall not bind her at full age, for in a Writ directed to the Eſcheator to make partition, there is a Salvo jure; And there is no judgment upon ſuch a partition. But if ſuch a partition be equall, it ſhall bind, ſo that a part of the land holden in Capite be allotted to every of the Coparceners, for to that end there is an expreſs Proviſo in the Writ. (b) And this partition may be avoided either by Scire fac' in the Chancery, or by a Writ De partitione facienda at the Common Law at her full age. (a) F.N.B. 256.259,260. 261,262,263. 9 H.6.6. 21 E.3.31.

(b) Vide 21 E.3.31.

Sect. 258.

¶ ITem ſi deux parceners ſont, &c. le puiſne eſteant deins lage de 21. ans, & partition eſt fait enter eux, iſſint que la purparty que eſt allot al puiſn en poit meindre value que la purparty lauter, en teſt caſe le

ALſo if two Coparceners be, and the youngeſt being within the age of twenty one years, partition is made between them, ſo as the part which is allotted to the youngeſt, is of leſſe value then the part of the

¶ AS before in the caſe of the Feme Covert, (c) ſo it is in the caſe of the Enfant, for if the partition be equal at the time of the allotment, it ſhall bind him for ever, becauſe he is compellable by Law to make partition, and he ſhal not have his age in a Partitione facien- (c) 43 Aſſ.14. 9 H.6.5.6. 7 E.3.13. 8 E.3.24. 10 H.4.5. 31 Aſſ.16. 21 H.9.25.

da, and though the partition be unequall, and the Infant hath the leſſer part, yet is not the partition void, but voidable by his entry, for if he take the whole profits of the unequal part, after his full age, the partition is made good for ever. And therefore Littleton here giveth him a cavear. That in that caſe he take not the whole profits of his unequal part, neither ſhall an unequall partition in the Chancery bind an Infant as appeareth before. But a partition made by the Kings Writ De partitione facienda, by the Sheriff by the Oath of twelve men, and judgment thereupon given, ſhall bind the Infant, though his part be unequal. Cauſa qua ſupra.

le puiſne durant l' temps de ſon nonage, & auxy quaunt el vient a pleine age, ſ. de 21. ans, poit enter en la purparty a ſa ſoer allot & defeatera la partition. Mes bien ſoy gard tiel Parcener quant el vient a la plein age, que el ne preign a ſon uſe demeſne touts les profits des terres ou tenements que a luy fuer allots. Car donques el ſoy agrea a la partition a tiel age, en quel caſe la partition eſtoyera & demurra en ſa force: Mes peradventure les profits de la moiety el poit prendez, relinquiſant les profits de lauter moiety a ſa ſoer.

other; in this caſe the youngeſt during the time of her nonage, and alſo when ſhe cometh to full age, s. of 21. years, may enter into the part allotted to her ſiſter, and ſhall defeat the partition: but let ſuch Parcener take heed when ſhe comes to her full age, that ſhe taketh not to her own uſe all the profits of the lands or tenements which were allotted unto her: for then ſhe agrees to the partition at ſuch age, in which caſe the partition ſhall ſtand & remain in its force: but peradventure ſhe may take the profits of the moiety, leaving the profits of the other moiety to her ſiſter.

Sect. 259.

¶ The Law hath provided for the ſafety of a mans or womans eſtate, that * before their age of twenty one years they cannot bind themſelves by any Deed, or alien any Land, Goods, or Chattels.

* Vide Sect. 402, 403.

¶ *Age de* 21. *ans.* Before this age, a man or woman is called an Enfant.

Britton f. 65, 66. & 101. Fleta, lib. 3. cap. 14.

¶ *Fait.* Factum, Anglicè, a Deed, and ſignifieth in the Common Law, an Inſtrument conſiſting on three things, viz. Writing, Sealing, and Delivery, comprehending a bargain or contract between party and party, man or woman. It is called of the Civilians, Literarum obligatio.

¶ *Feoffement.* Of this word, ſufficient hath been

¶ Et eſt aſcavoir que quant il eſt dit, que males ou females ſont de pleine age, ceo ſerra entendue de age de 21. ans, car ſi devant tiel age, aſcun fait ou feoffment, grant, releaſe, confirmation, obligation, ou auter ſcripture ſoit fait per aſcun de eux, &c. ou ſi aſcun deins tiel age, ſoit Baylife ou receiver a aſcun home, &c. tout ſerve pur nient, & poit eſte avoyde

And it is to be underſtood, that when it is ſaid, that males or females be of full age, this ſhall be intended of the age of 21. years, for if before ſuch age any deed or feoffement, grant, releaſe, confirmation, Obligation, or other writing be made by any of them, &c. or if any within ſuch age be Baylife or receiver to any man, &c. all ſerve for nothing, and may be avoyded. Al-

Auxy

Aury home devant le dit age, ne serra my jure en un Enquest, &c.

So a man before the said age shall not be sworn in an Enquest, &c.

said before in the first Chapter of the first Book.

¶ *Grant.* Concessio is in the Common Law a conveyance of a thing that lies in grant, and not in Livery, which cannot passe without Deed, as Advowsons, Services, Rents, Commons, Reversions, and such like. Of this also, sufficient likewise hath been said in the first Chapter of the first Book. Lib.3. fol.63. in Lincoln Colledge case.

¶ *Release, Confirmation, &c.* Of these shall be spoken hereafter in their proper places and Chapters.

¶ *Obligation* is a word of his own nature, of a large extent, but it is commonly taken in the Common Law, for a Bond containing penalty, with condition for payment of money, or to do, or suffer some act or thing, &c. and a Bill is most commonly taken for a single Bond without condition.

¶ *Ou auter scripture soit fait per ascun de eux, &c.* Here by this (&c.) is implied, some exceptions out of this generality, (d) as an Infant may bind himself to pay for his necessary meat, drink, apparell, necessary physick, and such other necessaries, and likewise for his good teaching or instruction, whereby he may profit himself afterwards: but if he bind himself in an obligation, or other writing, with a penalty for the payment of any of these, that Obligation shall not bind him. (e) Also other things of necessity shall bind them, as a presentation to a Benefice; for otherwise the Laps shall incur against him. Also if an Infant, be an Executor, upon payment of any debt due to the Testator, he may make an acquittance, but in that case a release without payment is void; and generally whatsoever an Infant is bound to do by Law, the same shall bind him, albeit he doth it without suit of Law. But of this common learning this little taste shall suffice. (d) 18 E.4.2. 21 H.6.31. Lib.9. fol.87. Pinchons case. (e) 8 E.4.4. 9 H.6.5. 17 E.3.9. 29 Ass. 25. 2 Mar. Dier 104,105.

¶ *Bayliff ou receiver al ascun home, &c.* By this (&c.) many things are implied, as that by Bayliff is understood a servant that hath administration and charge of lands, goods, and Chattels, to make the best benefits for the owner, against whom an action of Account doth lie for the profits which he hath raised or made, or might by his industry or care have reasonably raised or made, his reasonable charges and expences deducted. (f) But one under the age of 21. years shall not be charged in any such account, because by intendment of Law, before his full age he hath not skill and ability to raise or make any such improvement and profit. Fleta li.2. ca.64. & ca.67. Brit. fol.62 70. Fleta lib.2. cap.64. 41 E.3.39. 46 E.3. Account 40. 2 R.2. ib.45. 6 R.2. ibid. 3 E.3.10. (f) 13 E.3. Infant 9. 17 E.2. Account,121. 21 E.3.8. 10 H.4.14. 2 H.4.13. Regist.135.

An account against a Receiver, is when one receiveth money to the use of another, to render an account; but upon his account he shall not be allowed his expences and charges. (g) And therefore a man cannot charge a Bayliff as a Receiver, because then the Bayliff should lose his expences and charges. (g) 43 E.3.31. 46 E.3.3. b. 4 H.6.27.

In an account against the Receiver, the Plaintiff must declare by whose hands the Defendant received the money, which he shall not do in the case of a Bayliff. (h) But in some case in an action of Account against one as Receptor denariorum, he shall have allowance of his expences and charges, and also shall account for the profit he received, or might reasonably receive; and this was provided by Law in favour of Merchants, and for advancement of Trade and Trafficke. (h) 30 E.1. Account 127. 47 E.3.22. 10 H.7.16. Bract.li.5.fol.334. Brit.fo.62. Fleta li.2. c. 64. & 51. 5 E.3.1. Lib. Intrat.17,18,19.

As if two joynt Merchants occupy their stock, goods, and merchandizes in common to their common profit, one of them naming himself a Merchant, shall have an account against the other naming him a Merchant, and shall charge him as Receptor denariorum ipsius B. ex quacunque causa & contractu ad communem utilitatem ipsorum A. & B. provenien' sicut per legem mercatoriam rationabiliter monstrare poterit.

(i) If there be two Joyntenants or Tenants in Common of lands, and the one make the other his Bayliff of his moiety, he shall have an action of Account against him as Bayliff: and so are the Books to be intended, that speak of an action of Account in that case. (i) 45 E.3.10. 3 E.3.27. 39 E.3.27. 47 E.3.22. F. N. B. 118.

So as there be but three kinds of Writs of Account, viz. against one as Gardian whereof Littleton hath spoken before in the Chapter of Socage. The second against one as Bayliff: And the third as Receiver, as here it appeareth. (k) For a man shall not be charged in an Account as Surveyor, Controuler, Apprentice, Reve, or Heyward. And to maintain an Action of Account, there must be either a privity in deed by the consent of the party, for (l) against a Disseisor or other wrong doer no account doth lie, or a privity in Law ex provisione legis, made by the Law, as against a Gardian, &c. whereof sufficient hath been spoken in that Chapter of Socage. (k) 13 E.3. Account 76. 41 E.3. ibid. 34. 8 E.3.46. 8 E.4.6. b. F.N.B. 119. d. (l) 2 Mar. B. Account 89. F.N.B.117. Pl. Com. 543. 2 H.4.12. 33 H.6.2. 4 H.7.6.&c.

¶ *No*

¶ *Ne ſerra jure en un Enqueſt, &c.* By this (&c.) is implied a maxim in Law. (m) quod minor jurare non poteſt. For example, (n) An Infant cannot make his Law of Non ſummons: (o) And therefore the default ſhall not grieve him, for ſeeing the mean to excuſe the default is taken away by Law, the default it ſelf ſhall not prejudice him. But yet this rule hath an exception, That (p) an Infant when he is of the age of 12. years, ſhall take the Oath of Allegiance to the King: and this was, as Bracton ſaith, Secundum leges Sancti Edwardi. But indeed ſuch was the Law in the time of King Arthur, (q) An Infant cannot upon his Oath make his Law in an action of debt. (r) And the husband and wife of full age for the debt of the wife, before the coverture ſhall make their Law.

(m) Bract. lib. 5. fol. 340. b.
(n) 13 E. 3. Ley 50.
(o) 26 E. 3. 63. 2 Maria Dier 104, 105.
(p) Vide devant Cap. de Homage & Cap. de Fealty, Sect. 85. 91. Bract. l. 2. fol. 124. Brit. fol. 73, 74. & fol. 19. Fleta lib. 1. cap. 27.
(q) 11 H. 6. 40. 1 H. 7. 25. 15 E. 4. 2.
(r) 46 E. 3. 10. 9 E. 4. 24. 15 E. 4. 2. 21 H. 3. 23.

Sect. 260.

¶ *A terre en fee ſimple eſt allot a la file puiſne.* It is firſt to be obſerved upon this whole caſe, that the fee ſimple land is allotted to the youngeſt daughter, and the land entailed to the eldeſt. This partition prima facie is good, and herein the partition differeth from the exchange, where in the exchange the eſtates muſt be equal.

But yet this partition by matter ſubſequent may become voidable, (as Littleton here puts the caſe) the eldeſt coparcener hath by the partition and the matter ſubſequent barred her ſelf of the right in the fee ſimple lands, inſomuch as when the youngeſt ſiſter alieneth the fee ſimple lands, and dieth, and her iſſue entreth into half the Lands entailed; yet ſhall not the eldeſt enter into half of the Lands in fee ſimple upon the Alienee; for by the alienation, the privity of the ſtate is deſtroyed.

¶ *Le puiſne file alien la terre en fee ſimple, &c.*

The ſame Law it is of the youngeſt Daugh-

¶ Item ſi terres ou Tenements ſoyent dones a un home en le taile, quel ad tant des terres en fee ſimple, & ad iſſue deux files, & debie, & les deux files font partition enter eux, iſſint que la terre en fee ſimple eſt allot a le file puiſne en allowance des terres & Tenements tailes allottes a le file eigne, ſi apres tiel partition fait, la puiſne file alienaſt ſa terre en fee ſimple a un auter en fee, & ad iſſue fits ou file & debie, liſſue poit bien entrer en les Tenements tailes & eux tener & occupier en purparty obeſque ſon Aunt. Et ceo eſt pur deux cauſes: un eſt, pur ceo que liſſue ne poit aver aſcun remedie de la terre alien p ſa mere, pur ceo que la terre fuit a luy en fee ſimple, & pur tant que il eſt un de les heires en taile, & nad my aſcun recompence de ceo que a luy affiert de les Tenements tailes, il eſt

ALſo if Lands or tenements be given to a man in tail, who hath as much land in fee ſimple, and hath iſſue two daughters, and die, and his two daughters make partition between them, ſo as the Land in Fee-ſimple is allotted to the younger daughter, in allowance for the Lands and Tenements in Tail allotted to the elder daughter, if after ſuch partition made, the younger daughter alieneth her land in fee ſimple, to another in fee, and hath iſſue a ſon or daughter and dies, the iſſue may enter into the lands in Tail, and hold and occupy them in purparty with her aunt. And this is for 2. cauſes: one is, for that the iſſue can have no remedy for the land ſold by the mother, becauſe the land was to her in fee ſimple, and in as much as ſhe is one of the heirs in tail, hath no recompence of that which belongeth to her of the lands in tail, it is reaſon

reaſon

reaſon que el eit ſa purparty ō les teñts tailes, & noſmement quant tiel partition ne fait aſcun diſcontinuance.

¶ Mes les contrary eſt tenus M. 10 H. 6 s. que le heire ne poit enter ſur l' Parcener que ad la terre taile, mes eſt mis a Formedon. *

that ſhe hath her portion of the Lands tailed, and namely when ſuch partition doth not make any diſcontinuance.

¶ But the contrary is holden *M.* 10. *H.* 6. s. that the heir may not enter upon the parcener who hath the intailed land, but is put to a *Formedon.* *

ter had a gift in tail, for the Reverſion expectant upon an eſtate taile is of no account in Law, for that it may be cut off by the Tenant in taile. Otherwiſe it is of an eſtate for life or years. If in this caſe the youngeſt Daughter alien part of the Land in Fee ſimple, and dieth, ſo as full recompence for the Land entailed deſcends not to her iſſue, ſhe ſhall waive the taking of any profits thereof, and enter into the Land entailed, for the iſſue in tail ſhall never be barred without a full recompence, though there be a warranty in Deed or in Law deſcended.

If on the other ſide the eldeſt Coparcener alien the land entailed and dieth, her Iſſue ſhall have a Formedon alone for the whole land entailed; for ſo long as the partition continueth in force, ſhe is only inheritable to the whole land in tail.

¶ *Et nad my aſcun recompence.* This is intended, as it appeareth, of a full Recompence.

¶ *Tiel partition ne fait aſcun diſcontinuance.* And the reaſon thereof is, for that it paſſeth not by Livery of ſeiſin, but the partition is in truth leſſe then a grant, for that it maketh no degree, but each Coparcener is in by deſcent from the common Anceſtor. See more of this in the Chapter of diſcontinuance. Section.

¶ *Mes le contrary eſt tenus, &c.* This is no part of Littleton, and is contrary to Law, as appeareth by Littleton himſelf, and beſides, the caſe intended is not truly vouched, for it is not in 10 H. 6. but in 20 H. 6 and yet there it is but the opinion of Newton, obiter, by the way. Vide F. tit. part. 1. 20 H. 6. 14.

Sect. 261.

¶ UN auter cauſe eſt, pur ceo q̄ il ſerra reté la folly del eign ſoer que il voit ſuffer ou agree a tiel partition, ou el puiſſoit aver ſi el voile, la moietie de la terre en fee ſimple, & ſon moiety des tenements en le taile, pur ſa purparty, & iſſint eſtre ſur ſans damage.

ANother reaſon is, for that it ſhall be accounted the folly of the eldeſt ſiſter that ſhe would ſuffer or agree to ſuch a partition, where ſhe might if ſhe would have had the moiety of the Land in Fee ſimple, and a moie- of lands entailed for her part, and ſo to be ſure without loſſe.

¶ *UN auter caſe, &c.* This is another reaſon to prove by the partition the eldeſt daughter hath concluded her ſelf, as is aforeſaid.

¶ *Son moietie des terres en le tail.* For if a writ of Partition had been brought, the eldeſt ſhould not have been compelled to take the whole eſtate in tail, for the prejudice that might after enſue, but might have challenged the one moiety of the Lands in tail, and another moiety of the Lands in Fee ſimple, and this ſhe might do ex proviſione legis. But when ſhe will not ſubmit her to the policy and proviſion of the Law, but betake her ſelf to her own policy and proviſion, there the Law will not aid her, as here by Littleton it manifeſtly appeareth. And ſo it is in the other caſe. (*) As if a man be ſeiſed of three Mannors of equal value in fee, and taketh wife, and chargeth one of the Mannors with a Rent charge, and dieth, ſhe may by the proviſion of the Law take a third part of all the Mannors and hold them diſcharged, but if ſhe will accept the entire Mannor charged, it is holden that ſhe ſhall hold it charged. (*) 26 E. 3. Dower 133. 17 E. 2. tit. Dower 164. 18 H. 6. 27.

A par-

A partition of lands intailed betweæn Parceners. if it be equal at the time of the partition ſhall bind the iſſues in tail for ever, albeit the one do alien her part.

Dier 1 Mar. 98.

But here it may be demanded. that ſeeing Littleton ſaith, that it ſhall be taken to be folly of the eldeſt Parcener, &c. what if ſo be the eldeſt did not know of the eſtate tail either in reſpect of the antiquity thereof, or for want of having of the evidence, or for any other cauſe, what folly can be imputed to her?

The anſwer is. That it is preſumed in Law, that every one is conuſant of her right and title to her own land, and on the other ſide it ſhould be arrected great folly in her to be ignorant of her own title. And therefore the reaſon of Littleton doth firmly hold.

Sect. 262.

¶ BEfore it appeareth that when the privity of the eſtate is deſtroyed by the feoffment of one Coparcener, that upon eviction of a moiety by force of an entail againſt the other, he ſhall not enter upon the Alienee. But in this caſe that Littleton here putteth, when the privity of the ſtate remaineth, and the part of the one is evicted, (*) ſhe ſhall enter and hold in Coparcenary with her other Coparcener, and ſo it is in the caſe of an exchange. By reaſon of the (&c.) in the end of this Section, there may two queſtions be juſtly demanded; What if the whole eſtate in part of the purparty of one Parcener be evicted by a title paramount? whether is the whole partition avoided, for that Littleton here putteth the caſe, that the whole purparty of the one is defeated?

(*) 15 E. 4. 3. 2. per Littleton li. 4. fol. 121, 122. Bards caſe.

The ſecond queſtion is, whether if but part of the ſtate of one Coparcener be evicted, as an eſtate in tail, or for life, leaving a Reverſion in the coparcener, whether that ſhall avoid the partition in the whole?

To the firſt it is anſwered, that if the whole eſtate in part of the purparty be evicted, that ſhall avoid the partition in the whole, be it of a Mannor that is entire, or of acres of ground, or the like, that be ſeverall; (n) for the partition in that caſe implieth, for this purpoſe both a warranty and a condition in Law, and either of them is entire, and giveth an entire in this caſe into the whole. And ſo hath

(n) 13 E. 4. 3. 42 Aſſ. 22.

¶ AUtre ſi home ſoit ſeiſie en fee dun carve de terre per juſt title, & diſſeiſiſt un enfant deins age dun auter carve, & ad iſſue deux files, & mozuſt ſeiſie dambideux carves, lenf. adonqz eſteant deins age, & les files entront & font partition, iſſint que lun carve eſt allotte al purparty lun, come per caſe al puiſne en allowance dauter carve que eſt allotte a le purparty de lauter, ſi pluis lenf. enter en le carve dont il fuit diſſeiſiſt ſur l' poſſeſſion la Parcener que ad meſme le carve, donqz m̃ le Parcener poit entrer en lauter carve que ſa ſoer ad, & tener en Parcenary obeſqz luy: Mes ſi le puiſne aliena m̃ la carve a un auter en fee ſimple devant lentrie lenf. & puis lenf. enter ſur le poſſeſſion lalienee, don-

ALſo if a man be ſeiſed in fee of a carve of land by juſt title, and he diſſeiſe an Infant within age of another Carve, and hath iſſue two daughters, and dieth ſeiſed of both Carves, the Infant being then within age, and the daughters enter and make partition, ſo as the one Carve is allotted for the part of the one (as per caſe to the youngeſt in allowance of the other Carve which is allotted to the purparty of the other) if afterward the Infant enter into the Carve whereof he was diſſeiſed upon the poſſeſſion of the Parcener which hath the ſame Carve, then the ſame Parcener may enter into the other Carve which her ſiſter hath, and hold in Parcenary with her. But if the yongeſt alien the ſame Carve to another in fee before the entry of

que

que el ne poit enter en lauter carve, pur ceo que per ſon alienation el ad luy tout ouſterment diſmiſſe daver aſcun part de les tenements come parcener. Mes ſi le puiſne devant lentrie lenfant fait de ceo un leaſe pur terme dans, ou pur terme de vie on en fee tayle, ſavant la reverſion a luy, & puis lenfant enter, la peradventure auterment eſt, pur ceo que el ne ſoy diſmiſſe de tout ceo que fuit en luy, mes ad reſerve a luy le Reverſion & le fee, &c.

the Infant, and after the Infant enter upon the poſſeſſion of the Alienee, then ſhe cannot enter into the other carve, becauſe by her alienation ſhe hath altogether diſmiſſed her ſelf to have any part of the tenements as Parcener. But if the youngeſt before the entry of the Infant make a Leaſe of this for terme of years, or for terme of life, or in Fee Tail, ſaving the reverſion to her and after the Infant enter, there peradventure otherwiſe it is, becauſe ſhe hath not diſmiſſed her ſelf of all which was in her, but hath reſerved to her the reverſion, and the fee, &c.

it been lately reſolved (o) both in the caſe of exchange and of the partition.

(o) Baſtards caſe, Lib.4 fol. 121.

To the ſecond, if any eſtate of freehold be evicted from the Coparcener in all or part of her purparty, it ſhall be avoyded in the whole. As if A. be ſeiſed in fee of one acre of land in poſſeſſion, and of the reverſion of another expectant upon an eſtate for life, and he diſſeiſe the Leſſee for life, who makes continual claim. A. dyeth ſeiſed of both acres, and hath Iſſue two Daughters, partition is made, ſo as the one Acre is allotted to the one and the other Acre to the other, the Leſſee enter, the partition is avoided for the whole, and ſo likewiſe hath (p) it been lately reſolved.

(p) Baſtards caſe, ubi ſupra.

(q) Yet there is a diverſity betwixt the warranty, and the condition which the Law createth upon the partition, where one Coparcener taketh benefit of the condition in law ſhe defeateth the partition in the whole.

(p) Vid. 5 E.3. tit. vouch. 248.

But when ſhe voucheth by force of the warranty in Law for part, the partition ſhall not be defeated in the whole, but ſhe ſhall recover recompence for that part. And therein alſo there is another diverſity betweene a recovery in value by force of the warranty upon the exchange, and upon the partition: for upon the exchange he ſhall recover a full recompence for all that he loſeth: But upon the partition ſhe ſhall recover but the moiety, or half of that which is loſt, to the end that the loſs may be equal.

Many other diverſities there be betweene exchanges and partitions, for there are more and greater privities in caſe of partition in perſons, blood, and eſtates, then there is in exchanges, all which were too tedious to rehearſe in this place, ſeeing ſo much as hath been ſaid herein is ſufficient for the explanation of the caſes of partition which Littleton hath put.

18 E.2. tit. aid 171. 19 H.6.26.

¶ *Donques el ne poet enter en lauter carve, &c.* By this is alſo approved that which hath been often ſaid before, that when the whole privity betweene Coparceners is deſtroyed, there ceaſeth any recompence to be expected either upon the condition in Law, or warranty in Law by force of the partition.

¶ *Per ſon alienation el ad luy tout ouſterment diſmiſſe daver aſcun part de les tenements come parcener.* Hereupon it followeth, that if one Parcener maketh a feoffment in fee, and after her feoffee is impleaded and voucheth the feoffor, (r) ſhe may have aid of her Coparcener to deraign a warranty Paramount, but never to recover pro rata againſt her by force of warranty in Law upon the partition; for here Littleton ſaith, that by her alienation ſhe ſhall be diſmiſſed her ſelf to have any part of the Land as Parcener. And without queſtion as Parcener ſhe muſt recover pro rata, upon the warranty in Law againſt the other Parcener.

(r) 41 E.3.24. 11 H.4.22, 23. 14 E.3. aid 24.

And yet in ſome caſe the Feoffee of one Coparcener ſhall have aid of the other Parceners to deraign the warranty paramount; and therefore (a) if there be two Coparceners, and they make partition, and the one of them infeoffs her ſon and heir apparant, and dieth, the ſonne is impleaded, albeit he be in by the feoffment of his mother; yet ſhall he pray in aid of

(a) 43 E.3.23. Plac. Com. 4 E.3.15. 5 E.3.7. 28 E.3.17, &c.

the

(b) 32 E.1.tit. Aid. 178. 3 E.2. ibid. 163.

the other Coparcener to have the warranty Paramount; and the reason (b) of the granting of this aid is, for that the warranty between the mother and the son is by Law annulled, and therefore the Law giveth the son, albeit he be in by scoffment to pray in aid of the other parcener to deraign the Warranty Paramount, wherin is to be observed the great equity of the Common Law in this case.

Ipsæ etenim leges cupiunt ut jure regantur.

(*) 2 H.6.16.

(*) But if a man be seised of lands in fee and hath issue two daughters, and make a gift in tail to one of them, and dy seised of the reversion in fee which descends to both sisters, and the Donee or her issue is impleaded, she shall not pray the ayd of the other Coparcener either to recover pro rata, or to deraigne the Warranty Paramount, for that the other sister is a stranger to the state Tail, whereof the eldest was sole Tenant, and never partition was or could be made.

¶ *Mes si le puisne devant lentry lenfant fait de ceo un lease, &c. ou en fee taile savant le reversion a luy, &c.* This (upon that which hath been said) needeth no explanation, Only this is to be observed, that albeit it be in the power of Tenant in tail to cut off the reversion, yet if the infant enter before it be cut off, the Law hath such consideration of this reversion, that she that loseth it shall enter into her sisters part, and hold with her in Coparcenary, for that the privity between them was not wholly destroyed.

Sect. 263.

¶ Item si soient trois ou quater parteners, &c, q̄ font partitiõ enter eux, si le part dun parcener soit defeat p̄ tiel loyal entrie, el poit ent̄ & occupier lauter terres devers touts les autres parteners, & eux compell' de fair novel partition de lauters terres, enter eux, &c.

ALso if there be three or four Coparceners, &c. which make partition between them, if the part of the one Parcener be defeated by such lawfull entry, she may enter and occupy the other lands with all the other Parceners, and compel them to make new partition between them of the other lands, &c.

¶ *Inter eux, &c.* This (&c.) implyeth, that so it is between the surviving parceners and the heirs of the other, or between the heirs of Parceners, all being dead.

Sect. 264.

¶ *Le Baron soy tient eins come tenant per le curtesie.*

This is no severance of the state in Coparcenary, (b) for the other Coparcener and the Tenant by the Courtesie shall be joyntly impleaded, for he doth continue the state of Coparcenary, as the other Parcener did.

(b) 24 E.3.29.31 E.3. Briefe 339. 9 E.4.13. 19 H.6.26. 3 H.6.26. 3 H.6. Ass.1. 37 H.6.8. 21 E.3.14.

¶ *Vers le tenant*

¶ Item si sont deux parteners, & lun p̄nt baron, & le baron & sa feme ont issue enter eux, & la feme deby, & le baron soy tient eins en le moiety com̄ tenāt per le curtesie, en ceo cas le parcener q̄ survesquist, et le tenant per le curtesie bien poiet faire par-

ALso if there be two parceners, and the one taketh husband, and the Husband and Wife have Issue between them, and his wife dieth, and the husband keepes himselfe in as Tenant by the curtesie, In this case the parcener which sur-

tition

tition enter eux, &c. Et ſi le tenant per le curteſie ne voit agreer al partition deſire fait, donques le parcener que ſurvelquiſt poit aver envers le Tenant per le curteſie, briefe De partitione facienda, &c. & luy cõpeller de faire partition. Mes ſi le tenant per le curteſie voile aver partition enter aux deſire fait, & le parcener que ſurvelquiſt ne voit ceo aver, donque le tenant per le curteſie navera aſcũ remedy pur aver partition, &c. Car il ne poit aver breife de Partitione facienda, pur ceo que il neſt parcener, car tiel breife giſt pur parceners tantſolement. Et iſſint poyes veyer que bꝛe de Partitione facienda, giſt envers tenant per le curteſie, & vncore il meſme ne poit aver tiel breife,

the curteſie, and yet he himſelfe cannot have the like Writ.

ueth, and the tenant by the curteſie may well make partitiõ between them, &c. And if the tenant by the curteſie will not agree to make partition then the parcener which ſurviveth may have againſt the tenant by the curteſie a Writ *De partitione facienda, &c.* & compel him to make partition. But if the tenant by the curteſie would have partition to be made between them and the parcener which ſurriveth will not have this, then the tenant by the curteſie cannot have partition, &c. For he cannot have a writ of *Partitione facienda*, becauſe he is no parcener. For ſuch a Writ lyeth for parceners only. And ſo you may ſee that a writ of *Partitione facienda*, lyeth againſt tenant by

per le Curteſie briefe de partitione facienda, &c. Here by the &c. is implyed that albeit that the Tenant by the Curteſie be an eſtranger in blood yet the (c) writ De partitione fac. clearly lyeth againſt the tenant by the Curteſie. becauſe he continueth the eſtate of Coparcenary. (c) 3. E.3.47.9.E. 3.13. 16. E. 3. Aid. 129. 16. E.3. ibid. 144.

If two Coparceners be, and one doth alien in fee they are Tenants in common and ſeverall writs of Præcipe muſt be brought againſt them, and yet the Parcener ſhall have a writ of partition againſt the Alienee at the Common Law, which is a farre ſtronger caſe then the caſe put of Tenant by the Curteſie. 28,E.3.3.

¶ *Tiel briefe giſt pur Parceners tantſolement.* Here by it appeareth that neither the Tenant by the Curteſie, nor (much leſſe) the Alienee of a Coparcener ſhall have a Writ of Partitione fac. at the Common Law, for Littleton ſaith here, that ſuch a writ lyeth only for Parceners, * but it may be brought by a Parcener againſt ſtrangers as it appeareth before. But a Nuper and a Rationabili parte doe lye only between two Coparceners on both ſides. (*) 3.E. 47. 48.

If three Coparceners be and the eldeſt doth purchaſe the part of the youngeſt, the eldeſt having one part by deſcent, and the other by purchaſe ſhall have a writ of Partition at the Common Law againſt the other middle ſiſter; Et ſic de ſimilibus. And ſo it is in a farre ſtronger caſe, if there be three Coparceners and the eldeſt taketh husband, and the husband purchaſe the part of the youngeſt, the husband for his part is a ſtranger and no Parcener, and yet he and his wife ſhall have a writ of Partition againſt the middle ſiſter at the Common Law, becauſe he is ſeiſed of one part in right of his wife who is a Parcener. Dier 1. Maria.98. F. N. B. 52. Regiſtr.

¶ *Pur aver Partition, &c.* Here by this (&c) is included all others that be ſtrangers in blood, whether they come to their eſtates by Purchaſe or by act in Law. Since Littleton wrote, by the Statutes (d) one Joynteuant or Tenant in common may have a writ of Partition againſt the other, and therefore at this day the Alienee of noe Parcener may have a writ of Partition againſt the other Parcener, becauſe they are Tenants in common: and the like had been attempted in former Parliaments (*) but prevailed not untill theſe latter Statutes. (d) 31.H.8. cap. 1 32.H.8. cap. 32. Vid. Sect. 290. (*) Rott. Parl. 1. R.2. m.83.

(e) The Tenant by the Curteſie ſhall have a writ of Partition upon the Statute of (e) Brooke tit. Partition 41.

32. H.8. ca. 32. for albeit he is neither Joyntenant nor Tenant in Common, for that a Præcipe lieth against the Parcener and Tenant by the Courtesie as hath ben sayd, yet he is in equali mischiefe as another Tenant for life.

(f) If there be three Coparceners and a stranger purchase the part of one of them, he and one other of the Coparceners shall not joyne in a writ of partition, neither by the Common Law, nor by force of the statute, for the words of the Preamble of the statute be (And none of them by the Law doth or may know their severall parts, &c. and cannot by the lawes of this Realme make partition therof, without other of their mutuall assents. &c.

(f) Mich. 7. et. 8. Eliz. Bendloes inter Wootton et Cooke. Dier 3. Mariæ 128. A. et 7. Eliz. 243.

Now in this case the one of the Plaintifes, viz. the Parcener may have a writ of Partition at the Common Law, and the other Parcener being a purchaser may have it by the statute and therefore they shall not joyne in one writ.

Chap. 2. Parceners by Custome. *Sect.* 265.

¶ *Mes il convient en le Declaration de faire mention de le custome.* Well said Littleton (g) That he in his Declaration must make mention of the Custome, as to say, That the land is of the Custome of Gavelkind, but he shall not prescribe in it. And so is it of Burgh English, and these two varie in that point from other Customes, for the Law, when they are generally alledged, taketh knowledge of these two.

See before all the Ancient Authors of the law concerning Gavelkind vbi supra. Lambert verbo Terra exscript

(g) 5.E.4. 8. b. 21.E. 4.56 b Plo. Com. 29. b. in Bucklers Case. vt. Sect. 8. ver sus finem.

In (h) Domesday it is thus sayd. Duo fratres tenuerunt in paragio, quisque habuit aulam suam, & potuerint ire quo voluerint.

(h) Borocheshire | Hartford.

¶ *Auxy tiel custome est en auters lieux Angleterre.* Of this sufficient hath ben said before.

¶ *North Gales.* wales, Wallia, It commeth (i) of the Saxon word Wealh which signifieth Peregrinus, or exterus, for the Saxons so called them, because in troth they were strangers to them, being the remaine of the old and antient Britons, a wise and warlike Nation inhabiting in the west part of England. These men have kept their proper Language for above these thousand years past, and they to this day call us Englishmen, Saisons, (that is) Saxons. And the like customs as our Author here saith was in North wales, was also in Ireland, for there the Lands also (which is one marke of the antient Britons) were for the nature of Gavelkind; but were by their Brehon Law the Bastards

(i) Lamb. verbo Welshmen. Silvester Giraldus.

¶ Parceners per le custome sont lou hõe seisie en fee simple, ou en fee taile de terr ou tenements q sont de tenure appel Gavelkind deins l' Coũtie de Kent, & ad issue divers fits & devie; tiels terr ou tenements discenderõt a touts les fits per le custome, & ovelment enheriterõt & ferront prition enter eux per le custome, sicome females ferront. & hee de Partitione facienda gist en ceo cas, sicome enter females, mes il convient en la declaration de faire mention q̃ le custom. Auxy tiel custome est en auters lieux Dengleterr. Et auxi tiel custome est en North Gales, &c.

Parceners by the Custome are, where a man seised in fee simple, or in Fee taile of Lands or Tenements which are of the Tenure called Gavelkind within the Countie of Kent, and hath issue divers sonnes and die, such Lands or Tenements shall descend to all the sons by the Custome, and shall equally inherit and make partition by the custome, as females shall doe, and a writ of Partition lieth in this case as between females, but it behoveth in the Declaration to make mention of the Custome. Also such Custome is in other places of England, and also such custome is in North-Wales, &c.

ſtards inherited with their legitimate ſons, as to the Baſtards that cuſtome was abolished. And agreeing with Littleton in this point, ſee an old Statute; * Aliter uſitatum eſt in Wallia, quam in Anglia, quoad ſucceſſionem hæreditatis, eo quod hæreditas partibilis eſt inter hæredes maſculos, à tempore cujus non extitit memoria partibilis extitit, Dominus Rex non vult quod conſuetudo illa abrogetur, ſed quod hæreditates remaneant partibiles inter conſimiles hæredes ſicut fieri conſuevit, & fiat partitio illius ſicut fieri conſuevit.

Vide Sect. 212.

* Stat. Walliæ, an. 12 E. 1.

¶ *Parceners per le Cuſtome, &c.* Well ſaid Littleton by the Cuſtome, for ſons are Parceners in reſpect of the cuſtome of the Fee or Inheritance, and not in reſpect of their perſons, as Daughters and Siſters, &c. be. (h) Et ſunt participes quaſi partem capientes, &c. ratione ipſius rei quæ partibilis, &c. & non ratione perſonarum, quæ non ſunt quaſi unus hæres, & unum corpus, ſed diverſi hæredes, ubi tenementum partibile eſt inter plures cohæredes perenctes qui deſcendunt de eodem ſtipite & ſemper ſolent dividi ab antiquo.

(h) Bract. li. 5. fo. 428. Brit. cap. 71. Flet. lib. 5. cap. 9.

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¶ Item il y ad auū partiē quel eſt dauter nature et dauter forme que aſcuns des partitions abauntdits ſont. Sicome home ſeiſie de terteine Terres en fee ſimple, ad iſſue deux files & leigne eſt mary, & le piere done parcel de ſes terres a le baron ove ſa file en frankmariage, & mozuſt ſeiſie d remnant, le quel remnant eſt de pluis greinder value per an, q̄ ſont les Terres donēs en Frankmariage.

ALſo there is another partition which is of another nature, and of other form, then any of the partitions aforeſaid be. As if a man ſeiſed of certain Lands in Fee ſimple, hath iſſue two Daughters, and the eldeſt is married, and the father giveth part of his Lands to the Husband with his Daughter in Frankmarriage, and dieth ſeiſed of the remnant, the which remnant is of a greater yearly value then the lands given in Frankmarriage.

¶ *Dona parcel de ſes terres a le Baron ove ſa file en frankmariage.*

Here it appeareth; That a gift in frankmarriage may be made after marriage, as hath been ſaid in the Chapter of Fee tayl.

¶ *Le quel remnant eſt de pluis greinder value per an, &c.* Admit that the lands given in Frankmarriage are of greater value then the lands deſcended in Fee ſimple, Shall the other Siſter have any remedy againſt the Donees? it is plain ſhe ſhall not, becauſe it is lawfull for a man to diſpoſe of his own lands at his will and pleaſure.

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¶ En tel caſe le baron ne le fēe abera riens pur lour purpartie de le dit remnant, ſinon que ils voile mitter lour fres dones en frankmariage en Hotchpot obeſque le rem-

IN this caſe neither the husband nor wife ſhall have any thing, for their purparty of the ſaid Remnant, unleſſe they will put their lands given in Frankmarriage, in *Hotchpot*, with the remnant of the

¶ *En cel caſe le Baron ne le Feme avera riens pur lour purpartie, &c.* (i) This gift in Frankmarriage ſhall Prima facie be intended a ſufficient advancement, and therefore the remnant ſhall deſcend to the other Coparcener, only with this proviſion in Law Tacite annexed, that if the Do-

(i) 8 H. 3. breve 88. 34 E. 1. ſuper Obiit 19. adjudge 4 E. 3. 49. 10 Aſſ. p. 14. Vide 11 E. 3. 38. & 30 Aſſ. 3. Bract. lib. 2. fol. 77. Lib. 5. fol. 428. Brit. ca. 72. Fleta lib. 6. cap. 47.

næs will put the Land into Hotchpot, then ſhe ſhall out of the remnant make up her part equal, but the Doneés muſt do the firſt act, and in the mean time the whole fee ſimple land deſcends to the other. And this is warranted here by Littleton, viz. That the Doneés ſhall have nothing for the purparty of the remnant, unleſs they will put their lands given in Frank-marriage, in Hotchpot, ſo as the Doneés muſt do the firſt act, and more expreſly after in this Chapter, where he directly ſaith, that the other Siſter ſhall enter into the remnant, and them to occupy to her own uſe, unleſs the husband and wife will put the Lands given in frank-marriage, into Hotchpot. And herewith agreeth Fleta, who ſaith, Cum dicat tenens excipiendo, quod non tenetur petenti reſpondere quia A. participem habet, &c. replicari poterit a petente quod prædict' A. tenet quandam partem in maritagium de communi hæredit, nec vult illud in partem ponere. And here are three things (that I may ſpeak once for all) to be obſerved. First, That in this ſpecial caſe where there be two daughters, one of them only ſhall inherit the lands in fee ſimple. Secondly, That in this caſe there lyeth no writ of Partition, becauſe non tenent inſimul & pro indiviſo. Thirdly, If the Parcener to whom the land in fee ſimple deſcended, will not put the lands in Hotchpot, then may the Doneés enter into the fee ſimple lands, and hold them in Coparcenary with her.

nant de la terre obeſq; ſa ſoer. Et ſi iſſint ils ne voilent faire, donqs le puiſne poet tener & occupier ſa le remnant, & prendra a luy les profits tantſolement. Et ſil ſemble que ceſt parol (Hotchpot) eſt in Engliſh, A Pudding, car en tiel Pudding neſt communement miſe un choſe tantſolement, mes un choſe obeiſq; aukes choſes enſemble. Et pur ceo il covient en tiel caſe de mitter les Terres Dones en frankmariage, obeiſque les auters terres en Hotchpot, ſi le Baron, & ſa feme voilent aver aſcun pt en les auters terres.

land with her Siſter. And if they will not do ſo, then the youngeſt may hold and occupy the ſame remnant, and take the profits onely to her ſelf. And it ſeemeth that this word (*Hotchpot*) is in Engliſh *A Pudding*, for in this *Pudding* is not commonly put one thing alone, but one thing with other things together. And therefore it behoveth in this caſe to put the lands given in Frank-marriage with the other Lands in *Hotchpot*, if the Husband and Wife will have any part in the other Lands.

(k) Glanvil, lib. 7. cap. 3. Bracton, lib. 2. fol. 60. Fleta, lib. 2. cap. 5. Magna Carta cap. 18. 3. F.N.B. 222. 30 E. 3. 25. 31 E. 3. Reſp. 60. 31 Aſſ. 14. 27 E. 2. Detinue 17 E. 3. 17. 1 E. 2. Detinue 56. 32 H. 8. tit. Rationab. parte. Bonorum 6. * Lamb. fol. 110. 68.

(l) Regiſt. 142. 34 E. 1. Detinue 60. 1 E. 4. 6. 7 E. 4. 21. 43 E. 3. 38.

(m) 3 E. 3. Detinue 156. 40 E. 3. 18.

And it ſeemeth by our old Books, (k) That by the ancient Law there was a kind of reſemblance hereof concerning goods; Si autem poſt debita deducta & poſt deductionem expenſarum quæ neceſſariæ erunt, id totum quod tunc ſuperfuerit dividatur in tres partes, quarum una pars relinquatur pueris ſi pueros habuerit defunctus. Secunda, uxori ſi ſuperſtes fuerit, & de tertia parte habeat teſtator liberam diſponendi facultatem: ſi autem liberos non habeat, tunc medietas defuncto, & alia medietas uxori: ſi autem ſine uxore deceſſerit liberis exiſtentibus, tunc medietas defuncto, & alia medietas liberis tribuatur: ſi autem ſine uxore & liberis, tunc id totum defuncto remanebit. And by the Law before the Conqueſt it * was thus provided. Sive quis in curia, ſive morte repentine fuerit inteſtat mortuus, dominus tamen nullam rerum ſuarum partem (præter eam quæ jure debetur) herioti nomine ſibi aſſumito, verum eas judicio ſuo uxori, liberis & cognatione proximis juſtè pro ſuo cuique jure diſtribuito.

But it appeareth by the Regiſter, (l) and many of our Books, That there muſt be a cuſtome alledged in ſome County, &c. to inable the wife or children to the writ De rationabili parte bonorum, and ſo hath it been reſolved in Parliament. (m) But ſuch children as be reaſonably advanced by the Father in his life-time with any part of his goods, ſhall have no further part of his goods, for the words of the Writ be, Nec in vita patris ſui habuerunt.

Nota, the cuſtome of London is, That if the Father advance any of his children with any part of his goods, that ſhall bar them to demand any further part, unleſs the Father under his hand, or in his laſt Will do expreſly and declare, That it was but in part of advancement and then that child ſo partly advanced, ſhall put his part in Hotchpot, with the Executors and Adminiſtrators, and have a full third part of the whole, accounting that which was formerly given unto him as part thereof. And this is that in effect, which the Civilians call Collatio bonorum.

¶ Es

¶ *Et il ſemble que ceſt Parol (hotchpot) eſt en Engliſh*, a Pudding, &c. Littleton both here and in other places ſearcheth for the ſignification of words, in all Arts a thing moſt neceſſary, for ignoratis terminis ignoratur & ars. vide for Etymologies, Sect. 95. 219. 13. 154. 164. 204. 234, &c.

¶ *Hutſpot* or *Hotſpot*, is an old Saxon word, and ſignifieth ſo much as Littleton here treateth. And the French uſe Hochepot for a compoſition of divers things together. It ſignifieth here metaphorically in partem impoſitio. In Latine Farrago or Miſcellaneum. In Engliſh we uſe to ſay Hodgepodge, or The reaſon of this Section needeth no explication. Vide Britt. cap. 72. 4 E. 3. 19. 6 E. 3. 30. 10 E. 3. 38. 24 E. 3. 27. F. N. B. 262. Regiſt. 320. Fleta lib. 6. ca. 47. Mich. 19 E. 1. coram Rege Hereford. in Theſaur.

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¶ Et ceſt terme (hotchpot) neſt forſque un terme ſimilitudinarie, & eſt a tant adire, ceſtaſcavoir, de mitter les terres en Frankmarriage & les autres terres en fee ſimple enſemble, & ceo eſt a tiel enter de conuſer le value de touts les terres, &. de les terres dones en Frankmarriage, & de le remnant que ne fueront dones, & donqz partition ſerra fait en le forme que enſuiſt. Sicome mittamus que home ſoit ſeiſie de 30. acres de terre en fee ſimple chelcun acre de value de 12. d per an; & que il ad iſſue deux files, & lun eſt obiect de baron, & le pier dona 10. acres de les 30. acres a le baron, ove ſa file en Frankmarriage, & moruſt ſeiſie de le remnant, donques lauter ſoer entra en le remnant, &. en les 20. acres, & eux occupier, & ſon uſe demeine ſinon que le baron & ſa feme poiſe mitter les 10. acres dones in Frankmarriage, ove les 20. acres en hotchpot, ceſtaſcavoir, enſemble, & donque quant le value de chelcun acre eſt conus ceſtaſcavoir, que chelcun acre vault per an, & eſt aſſeiſe, ou enter eux egalm, que chelcun acre vault per an 12. d. donques le partition

AND this tearm (*Hotchpot*) is but a tearm ſimilitudinary, and is as much to ſay, as to put the lands in Frankmarriage, and the other Lands in Fee ſimple together, and this is for this intent, to know the value of all the Lands &c. of the Lands given in Frankmarriage, and of the remnant which were not given, and then partition ſhal be made in form following. As put the caſe that a man be ſeiſed of 30. Acres of Land in Fee ſimple, every Acre of the value of 12. pence by the year, and that he hath iſſue two Daughters, and the one is Covert baron, and the Father gives 10. Acres of the 30. Acres to the Huſband with his Daughter in Frankmarriage, and dieth ſeiſed of the remnant, then the other ſiſter ſhall enter into the remnant, *viz.* into the 20. Acres, and ſhall occupie them to her own uſe, unleſſe the husband and his wife will put the 10. Acres given in Frankmarriage, with the 20. Acres in Hotchpot, that is to ſay, together and then when the value of every Acre is known, to wit, what every Acre valueth by the year, and is aſſeiſed or agreed between them, that every Acre is worth by the year 12. pence. Then the partition ſhall be

ſerra fait en tiel ſorme, ceſtaſcavoir le baron & ſa feme averont ouſtre les 10. acres dones a eux en Frankmarriage 5. acres en ſeveraltie de les 20. acres & lauter ſoer avera le remnant, ſ. 15. acres de les 20. acres pur ſa purpartie, iſſint que accomptant les 10. acres que le baron & ſa feme ount per le done en Frankmarriage, & les auters 5. acres de les 20. acres, le baron & ſa feme ont autant en annual value, que lauter ſoer ad.

made in this manner, *viz.* the Husband and Wife ſhall have beſides the 10. acres given to them in Frankmarriage 5. Acres in ſeveralty of the 20. Acres, and the other ſiſter ſhall have the remnant, *ſcil.* 15. Acres of the 20. Acres for her purparty, ſo as accounting the 10. Acres which the Baron and Feme have by the gift in Frankmarriage, and the other 5. Acres of the 20. Acres, the Husband and wife have as much in yearly value as the other ſiſter.

Bract. lib. 2. fol. 77. lib. 5. fol. 428. Britt. cap. 72. & Fleta lib. 6. cap. 47. 4 E. 3. 49. 10 E. 3. 37. (n) 10 E. 3. 37. 10 Aſſ. 14. 4 E 3. 49. (o) 29 Aſſ. 23.

¶ AND herewith in expreſſe termes agreeth Bracton, Britton, and Fleta, and all the Books abovelaid and many others. And it is worthy the obſervation (n) that after this putting into Hotchpot, and partition made, the Lands given in Frankmarriage, are become as the other Lands which deſcended from the common Anceſtor, and of theſe Lands if ſhe be impleaded (o) ſhe ſhall have aide of the other Parcener as if the ſame Lands had deſcended. So the Coparcener that hath a Rent granted to her for oweltie of partition, as is aforeſaid, hath the Rent, as if it had deſcended to her from the Common Anceſtor.

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¶ ET iſſint touts foits ſur tiel partition, les terres dones en Frankmarriage demurgent a les dones & a lour heirs ſolonque le ſorme de le done. Car ſi lauter Parcener avoit riens de ceo que eſt done en Frankmarriage, de ceo enſueroit inconvenients, & choſe encounter reaſon, que la ley ne voit ſuffer. Et la cauſe que les terres dones en Frankmarriage ſerront mis en Hotchpot, eſt ceo, quant home done terres ou tenements en Frankmarriage ove ſa file, ou ove auter couſin, il eſt entendus per la ley que tiel done fait per tiel Parol (Frankmarriage) eſt un avancement, & pur avancement de ſa file, ou de ſon auter couſin, & noſmement

AND ſo always upon ſuch partition the Lands given in Frankmarriage remain to the Donees and to their heirs according to the form of the gift, for if the other Parcener ſhould have any of that which is given in Frankmarriage: of this would enſue an inconvenience, and a thing againſt reaſon, which the Law will not ſuffer. And the reaſon why the Lands given in Frankmarriage ſhall be put in Hotchpot, is this when a man giveth Lands or Tenements in Frankmarriage with his Daughter, or with his other Couſin, it is intended by the Law that ſuch gift made by this word (Frankmarriage) is an advancement, and for advancement of his Daughter, or of his Couſin, and namely, when

quant

quant le donor & ſes heires naberont aſcun rent ne ſervice de eux, ſi non que ſoit fealty, tanque le quart degree ſoit paſſe, &c. Et pur tiel cauſe la ley eſt que el avera riens de les auters terres ou tenements diſcendus a lauter parcener, &c. ſinon que el voile mitter les terres dones en frankmariage en Hotchpot, come eſt dit. Et ſi el ne voille mitter les terres dons en Frankmarriage en Hotchpot, donque el navera riens del remnant pur ceo q̄ ſerra entendu per la ley que el eſt ſufficientment avance, a que avancement el ſoy agree & luy tient content.

the donor and his heirs ſhall have no Rent nor ſervice of them but fealty untill the fourth degree be paſt. And for this cauſe the Law is that ſhe ſhall have nothing of the other lands or tenements deſcended to the other parcener, &c. unleſſe ſhe wil put the lands given in frankmarriage in Hotchpot as is ſaid. And if ſhe will not put the lands given in Frankmarriage in Hotchpot, then ſhe ſhall have nothing of the remnant, becauſe it ſhall be intended by the Law, that ſhe is ſufficienly advanced, to which advancement ſhe agreeth and holds her ſelf content.

¶ *De ceo enſueroit inconvenience & choſe encounter reaſon que la ley ne voet ſuffer.*

Quod eſt inconveniens aut contra rationem non permiſſum eſt in lege. Hereby it appeareth, as it hath been often noted, (o) that an argument ab inconvenienti aut ab eo quod eſt contra rationem, is forcible in Law. (p) Nihil enim quod eſt inconveniens eſt licitum.

Regula.
(o) Vide Sect. 138, 139, 231, 440, 478, 488, 722.
(p) 40 Aſſ. 27.

¶ *Tanque le 4. degree ſoit paſſe &c.* Hereby (&c.) is implied how the degrees ſhall be accounted, whereof ſufficient hath been ſaid before. Sect. 20.

Sect. 270.

¶ Meſme la ley eſt perenter les heires de les dones en frankmarriage, & les auters parteners, &c. ſi les dones en frankmarriage devoient devant lour auncestor, ou devant tiel partition, &c. quant a mitter en Hotchpot, &c.

THe ſame Law is between the heirs of the donees in frankmarriage, and the other parceners, &c. if the donees in frankmariage die before their anceſtor or before ſuch partition, &c. as to put in Hotchpot, &c.

¶ By theſe (&c.) in this Section is implied that if either the Doners die before the Anceſtor, or ſurvive the Anceſtor, and die before ſuch a partition, or if the Doners and all the Parceners die before ſuch partition upon the putting into Hotchpot, their iſſues ſhall have the ſame benefit to put the Lands into Hotchpot, for that benefit is heritable, and deſcendible to the iſſues.

Sect. 271.

¶ Et nota que dones en Frankmarriage fueront per

ANd note that gifts in frankmarriage were by the Common

¶ *Ouſtinue, &c.* By this (&c.) is to be underſtood that before the Statute it was a fee ſimple, and ever

ſince the ſtatute a fee tail. So as it is true, that (q) the gifts do continue (as our Author here ſaith) but not the eſtates. For the eſtate is changed as at large appeareth in the Chapter of eſtates in tail. And albeit our Author here ſaith that ſuch gifts have been always ſince uſed and continued, yet now they be almoſt grown out of uſe, and ſerve now principally for Moote caſes and queſtions in Law that thereupon were wont to riſe.

(q) 12 H. 4. 11. 31 E. 3. Gard. 116.

la common ley devant le Statute de Weſtm ſecond, & tout temps puis ad eſte uſe & continue, &c.

Law before the Statute of Weſtm. ſecond and have been always ſince uſed and continued, &c.

Sect. 272.

¶ The lands given in frankmariage, and the lands in Fee ſimple muſt move from one & the ſame Anceſtor for the lands given in Frankmariage are in reſpect of the advancement accounted in Law as hath been ſaid, as if the ſame had deſcended from the ſame Anceſtor who died ſeiſed of the fee ſimple lands, and there is not reaſon to barre the Donee of her full part of the fee ſimple lands that deſcended from another Anceſtor from whom ſhe had no ſuch advancement.

¶ Item, tiel mitter en hotchpot, &c. eſt lou les auters terres ou Tenements q̄ ne fuere dones en frankmariage diſcendont de les doners en frankmariage tantſolement car ſi les terres diſcenderont a les files per le pier le donor, ou per le mere le donor, ou per le frere le donor, ou auter anceſtor, & nemy per le donor, &c. la auterment eſt, car en tiel cas el a quel tiel done en frankmariage eſt fait avera la part icome nul tiel done en frankmariage uſt eſte fait, pur ceo que el ne fuit advance per eux, &c. eins per un auter, &c.

Alſo ſuch putting in Hotchpot, &c. is where the other lands or tenements which were not given in frankmariage deſcend from the donors in frankmariage only, for if the lands ſhall deſcend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor or other anceſtor, and not by the donor, &c. there it is otherwiſe, for in ſuch caſe, ſhe to whom ſuch gift in frankmariage is made ſhal have her part as if no gift in frankmariage had been made becauſe that ſhe was not advanced by them, &c. but by another, &c.

¶ *Nemy per le donor, &c.* Here (&c.) implieth no more but that Donor that made the gift of Frankmariage, the other two (&c.) in this Section need no explanation.

Sect. 273.

¶ By this Section and the (&c.) herein ſome have gathered that the value of the lands ſhall be accounted as they were at the time of the gift in

¶ Item ſi home ſeiſie de 30. acres de terre chelcun acre de obel annual value eiant iſſue deux files come eſt avantdit, & dona 15. acres de

Alſo if a man be ſeiſed of 30. acres of land every acre of equal annuall value, and have iſſue two daughters as aforeſaid, and giveth 15. acres

ceo

teo a le baron obe ſa file en frankmariage, & moruſt ſeiſie de les auters 15. acres, en teſt caſe lauter ſoer avera les 15. acres iſſint diſcẽdus a luy ſole, & le baron & ſa feme ne mitteront en tiel cas les 15. acres a eux dones en frankmariage en Hotchpot, pur teo q̃ les teneñts dones en frankmariage ſont de auxy grand & de bone annual value, come les auters terres diſcendus, &c. Car ſi les terres dones en frankmariage ſont de tant egal annual value, que le remnant ſont, ou de pluis value, en vaine et a nul entent tielx tenements dones en frankmariage ſerra mis en Hotchpot, &c. pur teo que el ne poet riens aver de les auters terres diſcendus, &c. car ſi el aſtoit aſcun parcel de les Tenements diſcendus, donques el avera pluis de annual value que ſa ſoer, &c. que la ley ne voit, &c. Et ſicome eſt parle en les caſes avantdits de deux files ou de deux parceners, en m̃ le maner eſt ẽ ſemblable cas lou ſont pluſors ſoers ou pluſors parceners, ſolonq̃ teo q̃ le caſe & le matter eſt, &c.

hereof to the Husband with his daughter in frankmariage, and dies ſeiſed of the other 15. acres. In this caſe the other Siſter ſhall have the 15. acres ſo deſcended to her alone, and the husband and wife ſhall not in this caſe put the 15. acres given to them in frankmariage into *Hotchpot*, becauſe the Teneements given in frank mariage are of as great and good yearly value as the other Lands deſcended, &c. for if the Lands given in frankmariage be of equal or of more yearly value then the remnant, in vain and to no purpoſe ſhall ſuch Teneements given in frankmariage be put in *Hotchpot*, &c. for that ſhe cannot have any of the other Lands deſcended, &c. for if ſhe ſhould have any parcell of the Lands deſcended, then ſhe ſhall have more in yearly value then her Siſter, &c. which the Law will not, &c. And as it is ſpoken in the caſes aforeſaid of two Daughters or of two Parceners; in the ſame manner it is in like caſe where there are more Siſters or more Parceners according as the caſe and matter is, &c.

Frank-mariage, but it is clear that the value ſhall be accounted as it was at the time of the Partition. for if the Donor purchaſe more Land after the gift. or if the land given in Frank-mariage be by the act of God decayed or waſte. or if the remnant of the lands in the Tenple be improved after the gift. or è converſo, the Law ſhall adjudge of the value as it was at the time of the Partition, (unleſſe it be by the proper Act or default of the parties) as hath been ſaid before in the former Chapter. And ſome have collated upon this Section that the reverſion in fee of the Lands given in Frank-mariage ſhall only deſcend to the Donor, by reaſon that the other Siſter ſhall have more benefit then the Donee, which ſhould be againſt the reaſon of our Author.

¶ *In vaine & a nul entent, &c.* For it is a Maxime in Law, Lex non percipit inutilia; quia inutilis labor ſtultus. Regula. Vid. Sect. 134. 378. Lib. 3. fol. 89.

Sect.

Sect. 274.

¶ ET eſt aſcavoire, que Terres ou tenemẽts dones en frankmariage ne ſerra miſe en Hotchpot, forſque ou Terres diſcende en fee ſimple, car de terre diſcendus en fee taile Partition ſerra fait, ſicome nul tiel done en frankmarriage uſt eſte fait.

AND it is to be underſtood, that Lands or Tenements given in Frankmarriage ſhall not be put in *Hotchpot*, but where Lands deſcend in Fee ſimple, for of Lands deſcended in Fee tail partition ſhall be made, as if no ſuch gift in Frankmarriage had been made.

31 Aſſ. pla. 14.

¶ FOR of Lands intailed, the Donee in Frankmarriage ſhall have as much part as the other Coparcener, becauſe over and beſides the Land given in Frankmarriage, the Iſſue in Tail claimeth per formam doni, and both of the Parceners muſt equally inherit by force of the gift, & voluntas Donatoris, &c. obſervetur.

Sect. 275.

¶ ITem nuls Terres ſerra miſe en Hotchpot ou auters ſinon terres que fueront done en frankmariage tantſolement: Car ſi aſcun Feme ad aſcuns auters terres ou tenements per aſcun auter done en taile, el ne unques mittera tiel Terre iſſint done en Hotchpot, mes el avera ſa purpartie de le remnant diſcendus, &c. S. a tant que lauter Parcener avera ſon remnant.

ALſo no Lands ſhall be put in *Hotchpot* with other Lands, but Lands given in Frankmarriage only: for if a woman have any other Lands or Tenements by any other gift in tail, ſhe ſhall never put ſuch Lands ſo given in *Hotchpot*, but ſhe ſhall have her purparty of the remnant deſcended, &c. (*videlicet.*) as much as the other Parcener ſhall have of the ſame remnant.

13 E. 2. tit. Tail 26. 6 E. 3. 30. b. 4 H. 3. 49. 50.

Bract. lib. 2. fol. 77.

¶ FOR if the Anceſtor infeoffeth one of his Daughters of part of his Land, or purchaſe lands to him and her and their heirs, or giveth to her part of his lands in Tail ſpecial or general, ſhe notwithſtanding this ſhall have a full part in the remnant of the lands in Fee ſimple, for the benefit of putting, &c. into Hotchpot, is only appropriated to a gift in Frankmarriage, (quia maritagium cedit in partem) which ſhall be (as is aforeſaid) accounted as parcel of his advancement.

Sect. 276.

¶ ITem un auter Partition poet eſtre fait inter parceſis, que variaſt de les Partitions avantdits. Sicome y ſont trois Parteners, et le puiſne voet aver partition, & les auters deux ne voillont, mes voilent tener en partenarie ceo que a eux affi-

ALſo another partition may be made between Parceners, which varieth from the Partitions aforeſaid. As if there be three Parceners, and the youngeſt will have partition, and the other two will not, but will hold in parcenarie that which to them belon-

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ert ſans partiſ, en ce caſe ſi vn pt ſoit alot en ſeualty al puiſne ſoer ſolonq̄ ceo que el doit aver, donques les auters poient tener le remnant en parcenarie, & occupier en common ſans partition ſi els voilent, & tiel partition eſt aſſets bone. Et ſi apres leigne ou le mulnes Parcener voile faize partition inter eux, de ceo que ils teignont, ils poient ceo bien faire quant a eux pleiſt. Mes lou partition ſerra fait per force d'vn Briefe de Partitione facienda, la auterment eſt car la covient que chelcun Parcener avera ſa part en ſeveraltie, &c.

¶ Pluis ſerr dit des parteſis en le Chapter de Joyntenants, & aury en le Chapter de Tenāts in Common.

geth, without partition: in this caſe if one part be allotted in ſeveraltie to the youngeſt ſiſter, according to that which ſhee ought to have, then the others may hold the remnant in parcenarie, and occupie in Common without Partition if they will, and ſuch partition is good enough. And if afterwards the eldeſt or middle parcener will make partition between them of that which they hold, they may well do this when they pleaſe. But where partition ſhall bee made by force of a Writ of *Partitione facienda*, there it is otherwiſe, for there it behoveth that everie parcener have her part in ſeveraltie, &c.

More ſhall bee ſaid of parceners in the Chapter of Ioyntenants, and alſo in the Chapter of Tenants in Common.

¶ HEre it is to be obſerved, That this partition is good by conſent, for Conſenſus tollit errorem, but if it be by the Kings writ, then everie Parcener must have his part. And here you may ſee that modus & conventio vincunt legem. 14.H. 3.tit. Partit. 19. Regu'a.

¶ *En ſeveraltie, &c.* Here by this (&c.) is implied another kind of ſeveraltie than our Author hath mentioned, and that is, That the one Parcener ſhall have the land in ſeveraltie from the feaſt of Eaſter, until the quie of Auguſt, (that is, the firſt of Auguſt) and the other in ſeveraltie from thence until the feaſt of Eaſter, or the like, & ſic alternis vicibus to them and their heires in perpetuum, whereof ſufficiens hath been ſpoken before.

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*Chap.*3. Of Joyntenants. *Sect.*277

¶ IOynteñts ſont, ſicome home ſeiſie de certain Terres ou Tenements, &c. & enfeoffe deux, trois, quater, ou pluſors, a aver & tener a eux pur term de lour vies, ou a terme dauter vie, per force de quel feoffment ou leaſe ils ſont ſeiſe

JOyntenants are, as if a man bee ſeiſed of certaine Lands or Tenements, &c. and infeoffeth two, three, four, or more, to have and to hold to them for term of their lives, or for term of anothers life, by force of which feoffement or

¶ THIS agreeth not with the Original, for it ſhould bee, Joynt ſont ſicome home ſeiſie de certaine terres ou tenements, &c. & ent enfeoffe deux ou trois, ou quatter, ou pluſors a aver & tener a eux & a lour heires ou leſſa a eux pur term de lour vies, ou pur terme dauter vie, per force de quel feoffement, ou leaſe, &c. The error may eaſily be perceived by that which is in print, viz. By force of which feoffment or leaſe, &c. ergo there muſt be Bract. li.4. fo. 262. Brit ed. 35. & fo. 312. Flet. lib. 3. ca.4. 10. & li.6. cap. 47.

be fromment and leaſe ſpoken of before.

There be alſo Joyntenants by other conveyances than Littleton here mentioneth as by Fine, Recoverie, Wargaine, and Sale, Releaſe, Confirmation, &c. So there be divers other limitations than Littleton here ſpeaketh of: As if a Rene charge of ten pounds be granted to A. and B. to have and to hold to them two, viz. to A. untill he be married, and to B. untill he be advanced to a Benefice, they be Joyntenants in the meane time, notwithſtanding the ſeverall limitations: and if A. die before marriage, the rent ſhall ſurvive; but if A. had married, the rent ſhould have ceaſed for a moietie, & ſic è converſo on the other ſide.

ſies, tiels ſont Joyntenants.

leaſe they are ſeiſed, theſe are Ioyntenants.

7. E. 4. 29. 11. H. 4. 26. Littleton having ſpoken of one kind of Tenants pro indiviſo, viz. of Parceners, commeth now to another, viz. Joyntenants, and firſt of Joyntenants of Freehold. If an Alien and a ſubject purchaſe lands in fee, they are Joyntenants, & the ſurvivorſhip ſhall hold place, Et nullum tempus occurrit Regi, upon an office found.

¶ *Joyntenants*, So called becauſe the lands or tenements, &c. are conveyed to them joyntly, conjunctim feoffati, &c. or, qui conjunctim tenent, and are diſtinguiſhed from ſole or ſeverall Tenants, from Parceners, and from Tenants in Common, &c. and anciently they were called Participes, & non hæredes. And theſe Joyntenants muſt joyntly implead and joyntly be impleaded by others, which property is common between them and Coparceners, but Joyntenants have a ſole qualitie of ſurvivorſhip, which Coparceners have not. Littleton having now ſpoken of Parceners and of Joyntenants of right, doth next ſpeak of Joyntenants by wrong.

Flet. lib. 6. ca. 47. Bract. lib. 5. fol. 435. 4.

Sect. 278.

¶ It is to be obſerved, That ſome Diſſeiſours, be Tenants of the land and ſome be no Tenants of the Lands, and of both theſe kinds Littleton here ſpeaketh

¶ &c. In the firſt &c. nothing is implied but four or five, or more, but in the latter (&c.) many things be to be underſtood, as of Diſſeiſors that be no Tenants, ſome are Coadiutors, whereof Litleton here ſpeaketh, ſome Counceilors, Commanders, &c. when the diſſeiſin is not to be done to any of their uſe. Alſo if A. diſſeiſe one to the uſe of B. who knoweth not of it, and B aſſent to it, in this caſe till the agreement A. was Tenant of the land, and after agreement B. is Tenant of the land, but both of them be Diſſeiſors: for omnis rati habitio retrotrahitur & mandato equiparatur. And it is worthy of the obſervation, and implyed alſo in the latter (&c.) that ſeeing Coadiutors, Counceilors, Commanders, &c. are all Diſſeiſors, that albeit the Diſſeiſor which is Tenant dieth, yet the Aſſiſe lieth againſt the Coadiutor, Counceilor, Commander, &c. and Tenant of the land, though he be no diſſeiſor.

30. E. 3. 2. 17. Aſſ. 14. 14. Aſſ. 2. 8. Aſſ. p. 30. 10. E. 3. 47. 10. Aſſ. 22. 22. H. 8. tit. Diſſeiſ. b. 77. 28. Aſſ. 21. 27. Aſſ. 30. 12. E. 4. 9. 7. E. 4. 7. b. 38. Aſſ. 7. 21. H. 7. 35. 29. Aſſ. 59. 21. H. 8. 25. 35. H. 6. 61. 21. E. 4. 46. 15. E. 4. 15. F. N. B. 179. g.

(a) The Demandant and others in a Præcipe did diſſeiſe the Tenant to the uſe of the others, and the Writ did not abate, for the Demandant was a Diſſeiſor, but gained no tenancie in the land, for that he was but a Coadiutor.

(a) 50. E. 3. 2.

A man diſſeiſeth Tenant for life to the uſe of him in the reverſion and after he in the reverſion agreeth to the diſſeiſin, it is ſaid, That he in the reverſion is a Diſſeiſor in fee, for by the diſſeiſin made by the ſtranger, the reverſion was diveſted, which (ſay they) cannot be revеſted by the agreement

Item ſi deux ou trois, &c. diſſeiſont un aut dalcun terres ou Tenements a lour uſe demeſne: donques les Diſſeiſours ſont Joyntenant. Mes ſils diſſeiſont un auter al uſe dun de eux, donques ils ne ſont Joyntenants, mes celuy a que uſe le diſſeiſin eſt fait eſt ſole tenant, & l's auters nont riens en le tenancie, mes ſont appels coadiutors a le diſſeiſin, &c.

Alſo if two or three &c. diſſeiſe another of any lands or tenements to their own uſe, then the diſſeiſors are Ioyntenant. But if they deſſeiſe another to the uſe of one of them, then they are not Ioyntenants, but he to whoſe uſe the Diſſeiſin is made, is ſole Tenant, and the others have nothing in the Tenancie, but are called Coadiutors to the Diſſeiſin, &c.

agreement of him in the Reuerſion, for that it maketh him a wrong doer, & therefore no relation of an eſtate by wrong can helpe him.

¶ *Coadiutor.* Coadiutor eſt qui auxiliatur alteri, and is deriued a Coadiuvando. Anglice, a fellow helper.

Sect. 297.

¶ Et nota q̄ diſſeiſin eſt p̄per mēt lou un home entra ē aſcun terres ou tenements lou cō entre neſt pas congeable, & ouſta celuy que ad Franktenement, &c.

And note that deſſeiſin is properly where a man entreth into any Lands or Tenements where his entry is not congeable, and ouſteth him which hath the Freehold, &c.

¶ This deſcription of a diſſeiſin and the (&c) in this place is underſtood onely of ſuch Lands and Tenements whereinto an entry may be made, and not of Rents, Commons, &c. whereof ſufficient hath been ſaid before in the Chapter of Rents, and ſo in effect Littleton deſcribeth it before the Edition of his Booke. And note here that every entry is no diſſeiſin, unleſſe there be an ouſter alſo of the Freehold. And therefore Littleton doth not ſet down an entry onely but an ouſter alſo, and as an entry and a claymer, or taking of profits, &c. Now as there be Ioyntenants by diſſeiſin, ſo are there Ioyntenants by Abatment, Intruſion, and Uſurpation, all which are included in the latter, &c.

3. E. 4. 9. 34. Aſſ. 11. 12. 26. Aſſ. 17. 41. Aſſ. 20. 24. E. 3. 31. Pl. Com. 89. Parſon de Henry Lane. 7. Aſſ. 10. 11. Aſſ. 25. 12. E. 3. tit. Aſſ. 88. 45. Aſſ. 7. 9. Aſſ. 19. 39. Aſſ. 1. 18. E. 2. Aſſ. 374.

Sect. 280.

¶ Et eſt aſcavoir que la nature de joyntenancie eſt q̄ celuy que ſurveſquiſt avera ſolement lentier tenancie ſolonq̄ tiel eſtate que il ad, ſi le joynture ſoit continue, &c. Sicome ſi trois Joyntenants ſont en Fee ſimple, & lun ad iſſue & debie, unqore ceux que ſurveſquont avont les tenements entier, & liſſue navera reiens. Et ſi le a. joyntenant ad iſſue & debie, unqore le tierce que ſurveſquiſt avera les tenemēts entier, & cuy avera a luy & a ſes

And it is to be underſtood, that the nature of joyntenancy is, that he which ſurviveth ſhall have onely the entire tenancy according to ſuch eſtate as he hath, if the joynture be continued, &c. As if three joyntenants bee in Fee Simple, and the one hath iſſue, and dyeth, yet they which ſurvive ſhall have the whole tenements, and the iſſue ſhall have nothing. And if the two joyntenants hath iſſue and dye, yet the third which ſurviveth ſhall have the whole tene-

¶ *Si le joynture ſoit continue, &c.*

Here by this (&c.) many points of Learning are to be obſerved, as that it is proper to joyntenants onely to have Lands by Survivor, for no Survivor of other Tenants pro indiviſo ſhall have the whole by Survivor, but only joyntenants, and this is called in Law Ius accreſcendi. Omnes ſeoffati ſunt ſimul habendi & tenendi nec totum nec partem ſeparatam nec per ſe, ſed et quilibet eorum totum habeat cum aliis in communi, & cum unus moriatur non deſcendit aliqua pars hæredi morientis nec ſeperata nec in cōmuni ante mortem omnium ſed pars illa communis per jus accreſcendi accreſcit ſuperſtitibus de perſona ad perſonam uſque ad ultimum ſuperſtitem. But although Survivorſhip bee proper to Joyntenants, yet it is not proper quarto modo (that is) omni, ſibi & ſemper, for there may be

Bracton lib. 4. fol. 261. b. Britton cap. 55. Fleta lib. 3. ca. 4. &c. 10. 49. E. 3. fol. 5. 6.

Ioyntenants, though there be not equall benefit of Survivor on both sides. As if a man letteth Lands to A. and B. during the life of A. if B. dyeth A. shall have all by the Survivor, but if A. dyeth B. shall have nothing.

Two, or more may have a Trust or an Authoritie committed to them joyntly, and yet it shall not survive. But herein are divers diversities to be observed: First, there is a diversitie between a naked Trust, or an Authoritie, and a Trust or Authoritie joyned to an estate or interest. Secondly, there is a diversitie between Authorities created by the partie for private causes, and Authoritie created by Law for Execution of Justice. As for example, (b) if a man devise that his two Executors shall sell his Land, if one of them dye the Survivor shall not sell it, but if he had devised his Lands to his Executors to be sold, there the Survivor shall sell it, which diversitie is implyed by our Author, for he sayeth, that he, that surviveth shall have the entire Tenancie.

(b) 39. Ass. p. 17 30. H. 8. tit. devise B. Dyer 3. Eliz. 190. 49. E. 3. 26. 2. Eliz. Dyer 177. 23. Eliz. Dyer 371. 4. Eliz. Dyer 210. 10. H. 4. 2. & 3. 14. H. 4. 34. 39. H. 6. 42. 31. Ass. 20. 33. H. 8. joynt. Br. 62. 30. H. 8 condition Br. 190.

If a man make a letter of Attorney to two, to doe any act, if one of them dye, the Survivor shall not doe it; but if a Venire facias be awarded to foure Coroners to impannell and returne a Jury, and one of them dye yet the other shall execute and returne the same.

If a Charter of feoffement (c) be made, and a Letter of Attorney to foure or three joyntly and severally to deliver seisin, two of them cannot make livery, because it is neither by them four or three joyntly, nor any of them severally: but if the Sheriffe upon a Capias directed to him make a warrant to four or three joyntly or severally to arrest the Defendant, two of them may arrest him, because it is for the execution of Justice (d) which is pro bono publico, and therefore shall be more favourably expounded, then when it is onely for private, and so hath it been adjudged, Iura publica ex privato promiscuè decidi non debent.

(c) 38. H. 8. Dyer 62. 27. H. 8. fol. 6.

(d) Pasch. 45. Eliz. in the Kings Bench between King Hobbes.

¶ *Et devie.* Note there is a naturall death and a civill death, and Littletons Case is to be intended of both, and therefore (e) if two Tenants be, and one of them entreth into Religion, the Survivor shall have the whole.

(e) 21. R. 2. judgment. 263.

Sect. 281.

TEE come le survivor tient lieu enter joyntenants, en meisme le manner il tient lieu enter eux queux ont joynt estate ou possession ove auter de chattel real ou personal. Sicome si leas de terres ou tents soit fait a plusors pur terme des ans, celuy q̄ survesquist de les lessees avera les tenements a luy entier, durant l' terme, per force de meisme le leas. Et si un chival ou un au-

AND as the survivour holds place between joyntenants, in the same manner it holdeth place between them which have joynt Estate or Possession with another of a Chattell, reall or personall. As if a Lease of Lands or Tenements bee made to many for tearme of yeares, he which survives of the Lessees, shall have the Tenements to him onely during the terme by force of

ter

ter chattel perſonall ſont done a pluſoꝛs, celuy que ſurveſquiſt avera le chival ſolement.

the ſame leaſe. And if a Horſe, or any other chattell perſonall be given to many, he which ſurviveth ſhall have the Horſe only.

¶ Hereby it is manifeſt that Survivoꝛ holdeth place regularly aſwell between Joyntenants of Goods and Chattels in poſſeſſion oꝛ in right, as Joyntenants of Inheritance of Freehold.

¶ *Chattel*, oꝛ Catell, whereof cometh the woꝛd uſed in Law (f) Catalla, and is as Littleton teacheth twofold, viz. reall, and perſonall, and putteth examples of both. (f) Regiſt. Origen 139,244. Bract. lib.2. 39 H.6.35. Stanford. Pr. 45.

Sect. 282.

¶ EN meſme le maner eſt de debts & duties, &c. car ſi un obligation ſoit fait a pluſoꝛs pur un debt, celuy q̄ ſurveſquiſt avera tout le debt ou dutie. Et iſſint eſt dauters Covenants & Contracts, &c.

IN the ſame manner it is of Debts and Duties, &c. for if an Obligation be made to many for one Debt, he which ſurviveth ſhall have the whole Debt or Duty. And ſo it is of other Covenants and Contracts, &c.

¶ Now he ſpeaketh of Debts, Duties, Covenants, Contracts, &c.

¶ *Dets & Duties, &c.* Here by force of this (&c.) an exception is to be made of two joynt Merchants, for the Wares, Merchandizes, Debts, oꝛ Duties that they have as joint Merchants oꝛ Parceners ſhall not ſurvive, but ſhall go to the Executoꝛs of him that deceaſeth, and this is per legem Mercatoriam, which (as hath been ſaid) is part of the Laws of this Realm foꝛ the advancement and continuance of Commerce and Trade which is pro bono publico, foꝛ the rule is, That Jus accreſcendi inter Mercatores pro beneficio commercii locum non habet. F.N.B. 117 E. 38 E.3.7.

And to the latter (&c.) in this Section the like exception muſt be made.

Sect. 283.

¶ Item, alcūs jointenants poient eſtre que poient aver joint eſtate, et eſtre jointenāts pur terme de lour vies, & uncoꝛe ils ont ſeveral inheritances. Sicome terres ſoient dones a deux homes & a lez heires de lour deux coꝛps engendꝛes, en teſt caſe les Donées ont joynt eſtates pur terme de lour deux vies, et uncoꝛe ils oūt

ALſo there may be ſome Jointenants which may have a joint Eſtate, and be joyntenants for terme of their lives, and yet have ſeverall Inheritances. As if Lands be given to two men and to the heirs of their two bodies begotten, In this caſe the Donees have a joynt eſtate for term of their two lives, and yet they have ſeverall inheritances, for if one of

¶ *Ils ont joynt eſtate pur terme de lour deux vies, &c.* Note, albeit they have ſeveral Inheritances in tail, and a particular eſtate foꝛ their lives, yet the Inheritance doth not execute, and ſo breaks the Joyntenancy, but they are Joyntenants foꝛ life, and Tenants in Common of the Inheritance in tail. Vide Sect. 296.

¶ *Sicome home & feme poient aver, &c.* Here a diverſity is implyed, when the eſtate of Inheritance is limited by one conveyance. Vidé Weſtcots caſe. Lib.2. fol.60,61.

as in this caſe it is, there are no ſeverall eſtates to drown one in another; But when the ſtates are divided in ſeverall conveyances, their particular eſtates are diſtinct & divided, and conſequently the one drowns the other: As if a Leaſe be made to two men for term of their lives, and after the Leſſor granteth the reverſion to them two, and to the heirs of their two bodies the joynture is ſevered, and they are Tenants in common in poſſeſſion. And it is farther implyed that in this caſe of Littleton there is no diviſion between the eſtate for lives, and the ſeveral inheritances, for in this caſe they cannot convey away the inheritances after their decaſe, for it is divided only in ſuppoſition and conſideration of Law, and to ſome purpoſes the inheritance is ſaid to be executed, as ſhall be ſaid hereafter.

Vide 12 E.4.2. b.

If a man make a Leaſe for (f) life, and after granteth the reverſion to the Tenant for life, and to a ſtranger and to their heirs, they are not joyntenants of the reverſion, but the reverſion is by act of Law executed for the one moiety in the Tenant for life, and for the other moiety he holdeth it ſtill for life the reverſion of that moiety to the Grantee.

(f) 39 H. 6. 2. b.

And ſo it is, if a man maketh a Leaſe (g) to two for their lives, and after granteth the reverſion to one of them in fee, the joynture is ſevered, and the reverſion is executed for the one moiety, and for the other moiety there is Tenant for life of the reverſion to the Grantee.

(g) Weſcots caſe, ubi ſupra.

Ibidem. 7 H. 6.

If Leſſee for life granteth his eſtate to him in the reverſion and to a ſtranger, the joynture is ſevered, and the reverſion executed for the one moiety by the act of Law.

ſeverall inheritances, car ſi lun des donees ad iſſue, & deby, lauter que ſurveſquiſt avera tout p le ſurvivor pur terme de ſa vie, et ſi celuy que ſurveſquiſt auxy ad iſſue, et deby, donques l' iſſue del un avera lun moietie, et liſſue del auter avera lauter moitie d la terre, & ils tiendront la terre enter eux en common, & ne ſont pas jointenants, mes ſont tenants en common. Et la cauſe pur q tielx Donées en tiel cas ont joynt eſtate pur terme de lour vies, eſt p ceo que al commencement les tres fueront dones a eux deux, les queux parolx ſans pluis dire font joint eſtate a eux pur terme de lour vies. Car ſi home voit leſſer tre a un auter p fait ou ſans fait, nient ſeulant mention q eſtate il averoit, & de ceo fait liverie de ſeiſin, en ceo caſe le leſſee ad eſtate pur terme de ſa vie, & iſſint entant que les terres fueront dones a eux, ils ont joint eſtate pur terme de lour vies: & la cauſe pur que ils averont ſeveral inheritances eſt ceo, entant que ils ne poiet aū p nul poſſibility

the Donees hath iſſue and die, the other which ſurviveth ſhall have the whole by the Survivor for term of his life, and if he which ſurviveth hath alſo iſſue, and die, then the iſſue of the one ſhall have the one moiety, & the iſſue of the other ſhall have the other moiety of the Land, and they ſhall hold the Land between them in Common, and they are not joyntenants but are tenants in common. And the cauſe why ſuch Donees in ſuch caſe have a joynt eſtate for term of their lives, is, for that at the beginning the lands were given to them two, which words without more ſaying make a joynt eſtate to them for term of their lives. For if a man will let land to another by Deed or without Deed, not making mention what eſtate he ſhall have, and of this make livery of ſeiſin, in this caſe the Leſſee hath an eſtate for term of his life, and ſo in as much as the lands were given to them, they have a joint eſtate for term of their lives, & the reaſon why they ſhall have ſeverall inhe-

lity un heire enter eux ingender, ſicome home & feme poient aver, &c. donque la ley voet que lour eſtate & lour enheritance ſoit tiel come reaſon voet, ſolonqꝫ la forme & effect des parolx del done, & ceo eſt a les heires q̄ lun engendra de ſon corps p̄ alcun de ſes femes, & a les heires q̄ lauf engendra de ſon corps p̄ alt̄ de ſes femes. &c. Iſſint il covient p̄ neceſſitie de reaſon que ils averont ſeverals enheritances. Et en tiel cas ſi iſſue dun des donées apres la mort des donées devie, iſſint que il nad alcū iſſue en vie de ſon corps engendre, donque le donor ou ſon heyre poit enter en la moiety come en ſon reverſion, &c. coment q̄ lauf des donées ad iſſue en vie, &c. Et la cauſe eſt, que entant que les enheritances ſont ſeveral, &c. le reverſion de eux en ley eſt ſeveral, &c. & le ſurvivor del iſſue del auter ne tiendra pas lieu daver lentierē.

ritances is this, in aſmuch as they cannot by any poſſibility have an heir between them ingendred, as a man and woman may have, &c. the Law will that their eſtate & inheritance be ſuch as is reaſonable, according to the form and effect of the words of the gift, and this is to the heirs which the one ſhall beget of his body by any of his wives, and to the heirs which the other ſhall beget of his body by any of his wives, &c. So as it behoveth by neceſſity of reaſon that they have ſeverall inheritances. And in this caſe if the iſſue of one of the donees after the death of the donees dy, ſo that he hath no iſſue alive of his body begotten, then the donor or his heir may enter into the moiety as in his reverſion, &c. although the other donee hath iſſue alive, &c. and the reaſon is, foraſmuch as the inheritances be ſeveral, &c. the reverſion of them in law is ſeveral, &c. and the ſurvivor of the iſſue of the other ſhall hold no place to have the whole.

If a man maketh a Leaſe for life and granteth the reverſion to two in fee, the Leſſee granteth his eſtate to one of them, they are not joyntenants of the reverſion, for there is an execution of the eſtate for the one moiety, and an eſtate for life, the reverſion to the other of the other moiety.

Here Littleton hath well reſolved a doubt, for of ancient time it hath been ſaid (h) That when lands have been given to two women, and to the heirs of their two bodies begotten (which caſe our Author putteth in the next Section) that the Husband having iſſue ſhould be Tenant by the Curteſie living the other ſiſter, for that as ſome held the inheritance was executed, and that the ſiſters were Tenants in Common in poſſeſſion, and conſequently the husband to be Tenant by the Curteſie, which he could not be if the women had a joynt eſtate for term of their lives: and likewiſe it was ſaid (i) that the iſſue of the one ſhould recover the moiety in a Formedon living the other ſiſter. But, Verba ſunt hæc, and Littleton grounding himſelf upon good Authority in Law hath cleared this doubt.

(h) 17 E.3.51.78. 18 E.3.33. 50 E.3. Statham. tit. done. 40 E.3. Proſiments & failt.97.

(i) 44 E.3. table 23. 8 Aſſ.33. 24 E.3.27. 7 H.4.16. Corbet's caſe. lib.7. fo.5.24.6. 4 Maria Dier 145. See before in the Chapter of Ten. by the curteſie doctrine.

¶ *Nient feaſant mention quel eſtate il averoit.* Here Littleton addeth materially (not making mention of what eſtate) for (k) if in the premiſſes lands be letten, or a Rent granted, the general intendment is, that an eſtate for life paſſeth, but if the Habendum limit the ſame for years or at will, the Habendum doth qua-

(k) Pl. Com. in Throckmorton's caſe.

liſie the general intendment of the premiſſes; And the reaſon of this is, for that it is a maxime in Law, That every mans grant ſhall be taken by conſtruction of Law moſt forcible againſt himſelf. Quælibet conceſſio fortiſſimè contra donatorem interpretanda eſt, which is for to be underſtood that no wrong be thereby done, for it is another maxime in Law Quod legis conſtructio non facit injuriam: And therefore if Tenant for life maketh a Leaſe generally, this ſhall be taken Regula.

taken by conſtruction of Law, an eſtate for his own life that made the Leaſe, for if it ſhould be a leaſe for the life of the Leſſee, it ſhould be a wrong to him in the reverſion. And ſo it is if Tenant in tail make a Leaſe generally, the Law ſhall contrive this to be ſuch a Leaſe as he may lawfully make, and that is for term of his own life, for if it ſhould be for the Leſſee, it ſhould be a diſcontinuance, and conſequently the eſtate which ſhould paſſe by conſtruction of law ſhould worke a wrong.

¶ *Et iſſint entant que les terres fueront dones a cux ils ount joynt eſtate pur lour vies.* This is plain, but with this exception, Unleſſe the Habendum doth otherwiſe limit the ſame. And therefore if a Leaſe be made (1) to two, Habendum to the one for life, the remainder to the other for life, this doth alter the generall intendment of the premiſſes, and ſo hath it bin oftentimes reſolved. And ſo it is if a Leaſe be made to two Habendum the one moiety to the one, and the other moiety to the other, the Habendum doth make them Tenants in Common, and ſo one part of the Deed doth explain the other, and no repugnancie between them, Et ſemper expreſſum facit ceſſare tacitum.

(1) 8 E. 3. 427. tit. Feoffement & Faits 73. 30 H. 8. tit. Joynt. Br. 53. Dier fol. 361. Pl. Com. 160.

Bracton.

¶ *Per nul poſſibilitie.* Here it is to be obſerved, That where the Grant is impoſſible to take effect according to the Letter, there the Law ſhall make ſuch a conſtruction as the gift by poſſibility may take effect, which is worthy of obſervation. Benignæ faciendæ ſunt interpretationes cartarum propter ſimplicitatem Laicorum, ut res magis valeat quam pereat.

¶ *Iſſint il covient per neceſſitie de reaſon.* The reaſon of the Law is the life of the Law, for though a man can tell the Law, yet if he know not the reaſon thereof, he ſhall ſoon forget his ſuperficial knowledge: but when he findeth the right reaſon of the Law, and ſo bringeth it to his natural reaſon, that he comprehendeth it as his own, this will not onely ſerve him for the underſtanding of that particular caſe, but of many other. For Cognitio legis eſt copulata & complicata. And this knowledge will long remain with him, all which is plainly implied by the words, and (&c.) of our Author in this Section.

¶ *Et en tiel caſe ſi liſſue dun des Donees apres la mort des Donees devie iſſint que il nad aſcun iſſue en vie de ſon corps engendres, donques le Donor ou ſon heire poet enter en le moietie.* This is miſtaken in the imprinting, and varieth from the original, which is, Si lun Donee ou liſſue dun les Donees apres la mort des Donees devie, iſſint que il nad aſcun iſſue, &c. For it is evident, that if the one Donee himſelf dieth without iſſue, the Inheritance doth revert for a moiety, and after the deceaſe of the other Donee, the Donor may enter into that moiety, and whether the Iſſue of the one Donee dieth without Iſſue at any time either in the life of the other Donee, or after his deceaſe, it is not materiall, for whenſoever no iſſue is remaining of the one Donee, ſo as the ſtate tail is ſpent, the Donor may after the deceaſe of the ſurviving Donee enter into that moiety.

Ariſtot. 1. Metaphyſ.

¶ *Et la cauſe eſt, que entant que les inheritances, &c.* Littleton in this Chapter hath often ſaid, Et la cauſe eſt, which is worthy of obſervation, for then we are truly ſaid to know any thing, when we know the true cauſe thereof: Tunc unumquodque ſcire dicimur cum primam cauſam ſcire putamus: Scire autem proprie eſt rem ratione & per cauſam cognoſcere.

Virg. 1. Georg.

Fœlix qui potuit rerum cognoſcere cauſas.

And therefore all Students of Law are to apply their principal indeavour to attain thereunto, all which is implied by the words and ſeveral, &c. in this Section.

Here the cauſe of the entry of the Donor into a moiety in this caſe is, That in as much as the Inheritance is ſeveral, the reverſion is ſeveral. Therefore upon the ſeveral determination of the eſtate in tail, the Donor may enter, and the Law termeth a reverſion to be expectant upon the particular eſtate, becauſe the Donor or Leſſor or their heirs after every determination of any particular eſtate, doth expect or look for to enjoy the Lands or Tenements again.

Dier 14 El. 309.

¶ *Le reverſion de eux en ley eſt ſeverall, &c.* Hereby, and by this (&c.) is implied, That upon one joynt or entire gift or Leaſe there is one joynt or entire reverſion, and upon ſeveral gifts or Leaſes there be ſeveral reverſions. And this is to be underſtood of the reverſion in the Donor or his heirs. But albeit the gifts or Leaſes be ſeveral, yet if the Donors or Leſſors grant the reverſion to two or more perſons and their heirs, they are Joyntenants of the reverſion. And ſo it is of a Remainder: and therefore if a gift be made to two men and the heirs of their two bodies begotten, the remainder to them two and their heirs, they are Joyntenants for life, Tenants in Common of the ſtate tail, and Joyntenants of the

fee

fee ſimple in remainder, for they are Joynt purchaſers of the Fee ſimple, and the remainder in fee is a new created eſtate: but the reverſion remaining in the Donor, or his heirs, is a part of his antient Fee ſimple.

Sect. 284.

¶ ET ſicome eſt dit de males, en meſme le maner eſt lou terre eſt done a deux females, & a les hẽes de lour deux corps engendres.

And as it is ſaid of Males, in the ſame manner it is where land is given to two females, and to the heirs of their two bodies engendred.

¶ If a man giveth Lands to two men and one woman, and the heirs of their three bodies begotten, In this caſe they have ſeveral Inheritances, for albeit it may be ſaid, that the woman may by poſſibility marry both the men one after another, yet firſt ſhe cannot marry them both in præſenti, 44 E.3. tit. Taile.13.

and the Law will never intend a poſſibility upon a poſſibility, as firſt to marry the one, and then to marry the other. Secondly, the form of the gift is, To the heirs of their three bodies, which is not poſſible, and therefore they ſhall have ſeveral Inheritances. And ſo it is, if a gift be made to one man and to two women, mutatis mutandis. In the ſame manner, if a gift in tail be made to a man and his mother, (m) or to a man and his ſiſter, or to him and his Aunt, &c. in this and like caſes, albeit the gift is made to a man and a woman, yet they have ſeveral inheritances, becauſe they cannot marry together, and are within the rule and reaſon of our Author. (m) 18 E.3. 39. 7 H.4.16.

Sect. 285.

¶ ITem ſi terres ſoyent dones a & a les heirs de lun de eux, ceo eſt bone Joynture, & lun ad franktenement, & lauter ad fee ſimple: Et ſi celuy que ad le fee debie, celuy que ad le franktenement avera lentiertie per le ſurvivor pur terme de ſa vie. En meſme le maner eſt, lou Tenement ſont dones a deux & les heires del corps dun de eux engenᵈs, lun ad franktenement, & lauter ad fee taile, &c.

Alſo if lands be given to two and to the heirs of one of them, this is a good Joynture, and the one hath a Freehold, and the other a fee ſimple: And if he which hath the fee dieth, he which hath the freehold ſhall have the entierty by ſurvivour for term of his life. In the ſame manner it is, where tenements be given to the heirs of the body of one of them engendred, the one hath a Freehold, and the other a fee tail, &c.

¶ By this Section, and the (&c.) in the end of it, they are Joyntenants for life, and the Fee-ſimple or eſtate tail is in one of them, and becauſe it is by one and the ſame conveyance, they are Joyntenants, and the Fee-ſimple is not executed to all purpoſes, as hath been ſaid before.

If a fine be levied to two, (n) and to the heirs of one of them, by force whereof he is ſeiſed, he that hath fee dieth, and after the Joyntenant for life dieth, and a ſtranger abates, in this caſe the heir may either ſuppoſe the fee ſimple executed, and have an aſſiſe of Mortdaunceſtor, the words of which writ be, Si R. pater ſuit ſeiſitus die quo obiit in dominico ſuo ut de feodo, which cannot be ſaid of him that hath but a remainder expectant upon an eſtate for life, but in reſpect that he is ſeiſed of a fee ſimple, and of a joynt (n) 42 E.3.9.10. 11 H.4.33. 31 E.3. Scire Facias 19. 29 H.8. Mord. 8.59. 4 E.3.37. F.N.B. 196. & 219. 4 E.3. Itinere Derby. 24 E.3.70.

eſtate in poſſeſſion, the words in the writ be true, That he was ſeiſed in Dominico ſuo ut de feodo. Likewiſe the heir may have a Writ of Right, which alſo in ſome ſort proves the Fee ſimple executed, or the heir may have a Scire facias to execute the fine, by which the heir ſuppoſeth that

that the fee was not executed, or he may maintain a Writ of Intruſion where the heir maketh the like ſuppoſition, and ſhall term it a Remainder. And yet when land is given to two and to the heirs of one of them, he in the remainder cannot grant away his fee ſimple, as hath been ſaid.

Sect. 286.

¶ *Laimer riens per diſcent de ſon compaignion, &c.* By which (&c.) is implied, That ſo it is if one Joyntenant acknowledge a Recognizance or a Statute, or ſuffereth a judgment in an Action of Debt, &c. and dieth before execution had, it ſhall not be executed afterwards. But if execution be ſued in the life of the Conuſor, it ſhall bind the ſurvivor, and it is further implied, That both in the caſe of the Charge and of the Recognizance, Statute, and judgment, if he that chargeth, &c. ſurvive, it is good for ever.

F.N.B. 204 E. 207. 7 H.6.2. 13 H.7.22. 10 E.3.34. 17 R.2. tit. Charge 15. 5 H.5.8. Vide Sect. 289.

(o) 9 H.6.52.

And ſo it is (o) if a man be poſſeſſed of certain lands for term of years in the right of his wife, and graunteth a Rent charge, and dieth, the wife ſhall avoid the charge, but if the husband had ſurvived, the the charge is good during the term.

(p) 8 E.3. tit. Execution Statham.

If a Villeine purchaſe lands, and bind himſelf in a Recognizance, if the Lord enter before execution, the Lord ſhall avoid the ſame, as it hath been ſaid.

But otherwiſe it is if he had made a Leaſe for years, for the reaſon that Littleton here yieldeth in this Section.

(q) 14 H.8.22. Pl. Com. 263. b. in Dame Hales caſe.

If two Joyntenants be of a Term, (q) and the one of them grant to I.S. that

¶ Item ſi deux joyntenaunts ſont ſeiſies deſtate en Fee ſimple, & lun graunt un rent charge per ſon fait a un auter hors de ceo, que a luy aſſiert, en teſt caſe durant la vie le Grantor, le Rent charge eſt effectual: Mes apres ſon deceſſe le graunt de le rent charge eſt void, quant a charger la terre, car celuy que ad la terre per le ſurviuor tiendra tout la terre diſcharge. Et la cauſe eſt, pur ceo que celuy que ſurveſquiſt clayma & ad la terre per le ſurviuor, & nemy ad, ne poet de ceo claymer rien per deſcent de ſon compaignion, &c. Mes autrement eſt de Parceners, car ſi ſoient deux Parceners des Tenements en fee ſimple, & devant aſcun partition fait, lun charge ceo que a luy aſſiert per ſon Fait, dun Rent charge, &c. & puis morust ſans iſſue, per que ceo que a luy aſſiert diſcend a lauter Parcener, en teſt caſe lauter Parcener tiendra la Terre charge, &c. pur ceo que il vient a cel moietie per deſcent come heire, &c.

Alſo if two Joyntenants be ſeiſed of an eſtate in Fee ſimple, and the one grants a Rent-charge by his Deed to another out of that which belongeth to him: in this caſe during the life of the Grantor, the Rent charge is effectuall, but after his deceaſe the grant of the Rent charge is void, as to charge the land, for he which hath the land by ſurvivor, ſhall hold the whole land diſcharged. And the cauſe is, for that he which ſurviveth claimeth and hath the land by the ſurvivor, and hath not nor can claim any thing by deſcent from his companion, &c. But otherwiſe it is of Parceners, for if there be two Parceners of Tenements in fee ſimple, and before any partition made the one chargeth that which to her belongeth by her Deed, with a Rent charge, &c. & after dieth without iſſue, by which that which belongeth to her deſcends to the other parcener, in this caſe the other parcener ſhall hold the land charged, &c. becauſe ſhe came to this moiety by deſcent, as heir, &c.

If

if he pay to him ten pound before Michaelmas, that then he shall have his term, the Grantor dyeth before the day, I. S. pays the summe to his Executors at the day, yet he shall not have the term. but the Survivor shall hold place, for it was but in nature of a Communication, but if he had made a Lease for years to begin at Michaelmas, it should have bound the Survivor.

And where Littleton putteth the case of a Rent charge, It is so likewise implied, that if one Joyntenant granteth a Common of Pasture, or of Turbary, or of Estovers, or a Corody or such like out of his part, or a way over the Land, this shall not bind the Survivor; for it is a maxime in Law, that Ius accrescendi præfertur oneribus; and there is another maxime, that Alienatio rei præfertur juri accrescendi. 45 E. 3. 13. Vide Sect. 285.

If one Joyntenant in Fee simple be indebted to the King, and dyeth, (r) after his decease no extent shall be made upon the Land in the hands of the Survivor. (r) 40 Ass. 36. 50 Ass. 5. F. N. B. 143. 9. Fl. Com. 321.

If a recovery be had against one Joyntenant who dyeth before execution, the Survivour shall not avoid this recovery, because that the right of the moiety is bound by it.

If one Joyntenant in fee, take a Lease for years of an estranger by Deed indented and dyeth, the Survivour shall not be bound by the Conclusion, because he claims above it, and not under it.

¶ *Et la cause pur ceo que celuy que survesquist claime & ad la terre per Survivor, &c.* Here again Littleton sheweth the reason: and the cause wherefore the Survivour shall not hold the Land charged is, for that he claimeth the Land from the first Feoffor, and not by his companion, which is Littletons meaning when he saith, (that he claimeth by Survivor;) For (f) the surviving Feoffee may plead a feoffment to himself without any mention of his joynt Feoffee. And this is the reason, That if two Joyntenants be in fee, and the one maketh a Lease for years, reserving a Rent and dyeth, the surviving Feoffee (t) shall have the Reversion by Survivour, but he shall not have the Rent because he claimeth in from the first Feoffor, which is paramount the Rent. If there be two Joyntenants in Fee, and the one Joyntenant grant a Rent charge out of his part, and after releaseth to his joynt companion and dyeth, he shall hold the Land charged, for that he is out of the reason and cause set down by Littleton, because he claimeth not by Survivor in as much as the release preventeth the same. And of this opinion was Littleton himself (u) before the Edition of his Book. But all men agree that if A. B. and C. be Joyntenants in fee, and A. chargeth his part, and then releaseth to B. and his heirs and dieth, that the (w) charge is good for ever, because in that case B. cannot be in from the first Feoffor, because he hath a joynt companion at the time of the Release made, and several writs of Præcipe must be brought against them. And albeit the Release of one Joyntenant to the resdue of the Joyntenants makes no degree in supposition of Law, nither is there any several estate between them, but the estate of him that releaseth is as it were extinguished and drowned in their estate and possession, so as one Præcipe lyeth against them, yet shall they hold the Land charged as is aforesaid. As if Tenant for life grant a Rent charge, and after surrendreth his estate to the Lessor, albeit the estate charged be drowned, and the Lessor is not in by him, yet he shall hold it charged.

(f) 14 E. 4. 1. b. 18 E. 2. Briefe 8. & 8 E. 2. Entry 77. 18 E. 3. 28. 38 E. 3. 26. 8 H. 6. 25. Vide 46 E. 3. 77. 35 H. 6. 39.

(t) Dyer Mich. 2. & 3 Eliz. 187. lib. 1. fol. 96. Vide lib. 6. fol 78, 79.

(u) 33 H. 6. 5. 2. 9 Eliz. Dyer 263.

(w) 37 H. 8. tit alienation. Br. 31. 10 E. 4. 3. b. 40 E. 3. 41. b. 34 H. 6. 5. 22 H. 6. 42. b. per Pole. 35 E. 3. Release 43. 33 E. 3. Avowry 195. 14 H. 8. 2.

¶ *Mes auterment est de Parceners, Car si sont deux Parceners, &c.* This is to be intended aswell of Parceners by Custome as of Parceners by the Common Law, and here is implyed the reason of the diversity, for that the Survivor doth claim above the charge, and the heir by descent under the charge.

Sect. 287.

¶ Item si sont deux joyntenants des terres en Fee simple deins un burgh, lou les terres & tenements sont devisables per testament, & si lun de les dits deux joyntenants devise ceo que a luy affiert per son

ALso if there be two Joyntenants of Land in Fee simple within a Borough, where Lands and Tenements are devisable by Testament, and if the one of the said two Joyntenants deviseth that which to him be-

¶ *Per son testament, &c.* Either in writing or nuncupative according to the custome.

¶ *Et la cause est pur ceo que nul devise, poet prender effect mes apres le mort le devisor & per sa mort tout la terre maintenant devient per la ley a son compagnion, &c.*

&c. Here both their claims commence at one inſtant, and although an Inſtant. Eſt Unum indiviſibile tempore quod non eſt tempus nec pars temporis, ad quod tamen partes temporis connectuntur, and that, Inſtans eſt finis unius temporis, & Principium alterius. Yet in conſideration of Law there is a priority of time in an inſtant, as here the Survivor is preferred before the deviſe, for Littleton ſaith, that the cauſe is that no deviſe can take effect till after the death of the Deviſor, and by his death all the Land preſently cometh by the Law to his Companion. Whereby it appeareth, that Littleton by theſe words, Poſt mortem & per mortem, though they jump at one inſtant, yet alloweth priority of time in the inſtant which he diſtinguiſheth by per and poſt. And the reaſon of this priority is, that the Survivour claimeth by the firſt Feoffor (as hath been ſaid) and therefore in judgement of Law his title is paramount, the title of the Deviſee, and conſequently the deviſe void, and the rule of Law is, that, Jus accreſcendi præfertur ultimæ voluntati.

Pl. Com. Fulmerſtons caſe.

teſtament, &c. & moruſt, ceo deviſe eſt voide. Et la cauſe eſt pur ceo que nul deviſe poit prender effect, mes apres la mort le deviſor, & per ſa mort tout la terre maintenant revient per la ley a ſon companion, que ſurveſquiſt per le ſurvivor, le quel il ne claime, ne ad riens en la terre per my le deviſor, mes en ſon droit demeſne p le ſurvivor, ſolonque le courſe de ley, &c. & pur cel cauſe tiel deviſe eſt voide. Mes auterment eſt de Parceners ſeiſies des tenements deviſables en tiel caſe de deviſe, &c. Cauſa qua ſupra.

longeth by his Teſtament, &c. and dyeth, this deviſe is void. And the cauſe is for that no deviſe can take effect till after the death of the Deviſor: and by his death all the Land preſently cometh by the Law to his companion, which ſurviveth by the Survivor, the which he doth not claim, nor hath any thing in the Land by the Deviſor, but in his own right by the Survivor according to the courſe of the Law, &c. and for this cauſe ſuch deviſe is void. But otherwiſe it is of Parceners ſeiſed of Tenements deviſable in like caſe of deviſe, &c. *Cauſa qua ſupra.*

Two Femes Joyntenants of a Leaſe for years, one of them taketh husband, and dyeth, yet the term ſhall ſurvive, for though all Chattels reals are given to the husband, if he ſurvive, yet the Survivor between the Joyntenants is the elder title, and after the marriage the Feme continueth ſole poſſeſſed, for if the husband dyeth, the Feme ſhall have it, and not the Executors of the husband, but otherwiſe it is of perſonal goods.

1 H. 5. Executors 108.

If a man be ſeiſed of a houſe, and poſſeſſed of divers heirelomes, that by cuſtome have gone with the houſe from heir to heir, and by his Will deviſeth away the heirelomes, this deviſe is void; for as Littleton here ſaith, the Will taketh effect after his death, and by his death the heirelomes by ancient cuſtome are veſted in the heir, and the Law preferreth the Cuſtome before the Deviſe. And ſo it is if the Lord ought to have a Herriot when his Tenant dieth, and the Tenant deviſeth away all his goods, yet the Lord ſhall have his Herriot for the reaſon aforeſaid. And it hath been anciently ſaid, that the Herriot ſhall be paid before the Mortuary.

(x) Fleta lib. 2. cap. 50. Bracton lib. 2. fol. 60. Britton fol. 178.

(x) Imprimis autem debet quilibet qui teſtaverit, dominum ſuum de meliore re quam habuerit recognoſcere, & poſtea Eccleſiam de alia meliore, &c. wherein the Lord is preferred, for that the tenure is of him. This duty to the Lord is very ancient, for in the Laws before the Conqueſt it is ſaid, Sive quis in curia, ſive morte repentina fuerit inteſtat' mortuus, Dominus tamen nullam rerum ſuarum partem (præter eam quæ jure debetur herioti nomine) ſibi aſſumito.

Lamb. fol. 119. 68.

In the Saxon tongue it is called Heregeat, as much to ſay (as I take it) as the Lords Weſte, for Here is Lord, and geat is Weſte. But let us return to Littleton.

¶ *Mes auterment eſt de Parceners ſeiſes des tenements deviſable en tiel caſe, del deviſe, &c.* Cauſa qua ſupra.

The reaſon is evident, for that there is no Survivor between Coparceners, but the part of the one is deſcendible, and conſequently may be deviſed.

Sect.

Sect. 288.

¶ Item il eſt comũement dit, q̃ chefc̃ Joyntenant eſt ſeiſie de la terr̃ q̃ il tient Joyntment, per my & per tout, & ceo eſt autant adire, q̃ il eſt ſeiſie p̃ chefcun parcel, & p̃ tout, &c. & ceo eſt voier, car en chefcun parcel & per chefcun parcel, & per touts les terres & tenements il eſt Joyntment ſeiſie ovelq̃ ſon companion.

ALſo it is commonly ſaid, that every Joyntenant is ſeiſed of the land which he holdeth ioyntly *Per my & per tout*, and this is as much to ſay as he is ſeiſed by every parcel and by the whole, &c. and this is true, for in every parcell, and by every parcell, and by all the lands and tenements he is ioyntly ſeiſed with his companion.

¶ *Item eſt communement dit, &c.* That is, It is the common opinion, and Communis opinio is of good authority in Law, A communi obſervantia non eſt recedendum, which appeareth here by Littleton. Vid. Sect. 697.

¶ *Per my & per tout.* Et ſic totum tenet & nihil tenet, s totum coniunctim, & nihil per ſe ſeperatim. And albeit they are ſo ſeiſed (as for example where there be two ioyntenants in fe) yet to divers purpoſes each of them hath but a right to a moiety, as to enfeoffe, give, or demiſe, or to forfeite or loſe by default in a Præcipe. If my villeine (y) and another purchaſe lands to them two and their heires, I may enter into a moiety. Vid. Bracton. lib. 5. fo. 430. Britton, cap. 35. Fleta, lib. 3. cap. 4. 40. E. 3. 40. 18. E. 2. bre. 831. 35. H. 6. 39. Vid the ſecond part of the Inſtitutes vpon the 6. chapter of the ſtatute De bigamis. Fleta, lib. 1. cap. 28. 40. Aſſ. 79. 48. E. 3. 16.

(y) Vid. 6. E. 3. 4. 7. E. 4. 29. 11. Eliz. Dyer. 283

And where all the joyntenants ioyne in a feoffment, every of them in judgement of Law doe give but his part. If an Alien and a ſubject purchaſe lands ioyntly, the King upon office found ſhall have but a moitie. And Littleton afterwards in this chapter ſaith that one joyntenant hath one moiety in Law, and the other the other moiety. And therefore if two joyntenants be (z) and both they make a feoffment in fe upon condition, and that for breach thereof one of them ſhall enter into the whole, yet he ſhall enter but into a moiety becauſe no more in judgement of Law paſſeth from him; and ſo it is of a Gift in enile or a leaſe for life, &c.

(z) Pl. Com. in Brownings caſe, fo.

Yet every joyntenant may warrant the whole, (a) becauſe a man may warrant more then paſſeth from him.

(a) Vid the ſecond part of the Inſtitutes upon the 6 chapter of the Statute of Bigamis.

If two joyntenants make a feoffment in fe (b) and one of the Feoffors die, the Feoffee cannot plead a feoffment from the ſubdivour of the whole, becauſe each of them gave but his part, but otherwiſe it is on the part of the Feoffees, as hath been ſaid before.

(b) 14. E. 4. 5. and the other bookes aboveſaid.

And where two joyntenants be, the one of them (c) may make the other his Bailiffe of his moiety, and have an Action of account againſt him. And one joyntenant (d) may let his part for yeares or at will to his companion.

(c) 21. E. 3. 60.

(d) 11. H. 3. 60. 33.

If two joyntenants be of certaine lands, and the one of them by Deed indented (e) bargaineth and ſelleth the lands, and the other joyntenant dyeth, and then the Deed is inrolled, there ſhall paſſe nothing but the moiety which the bargainer had at the time of the bargain.

(e) 6. E. 6. tit. Fait inroll. 9. Br.

Sect. 289.

¶ Item ſi deux joyntenants ſont ſeiſies de certain terres en Fee ſimple, & lun lour ſa eo que a luy affiert a un eſtranger pur terme de 40. ans, & devie devant le term com-

ALſo if two Joyntenants bee ſeiſed of certain lands in fee ſimple, and the one letteth that to her belongeth to a ſtranger for terme of fortie yeares, and dieth before the

¶ *Per force de meſme le dit leaſe, &c.* By this (&c.) is implied, That where our Author ſpeaketh of Joyntenants ſeiſed in fee, that ſo it is if two be ſeiſed for life, and one make a Leaſe to begin preſently, or in (f) Vid ſect. 286. & 660. & Sect 2.

in futuro, and dieth, this Leaſe ſhall binde the ſurvivor, as it hath been adjudged.

(g) 11.H. 4. 90. 14. H. 8. 6. 17. E. 4 6.2. 9.H.6.52. 21. H.7. 29.14.H.7. 4. 18. E.3. Execution 56. 11. El. Dy. 285.P. Com.160 a Temps E.1. All. 422. 20. H.6 4. 7 H.7. 13. 10. H. 7. 24.

(g) And if one Joyntenant grant veſturam terræ, or herbagium terræ, for yeares, and dieth, this ſhall binde the ſurvivor, for ſuch a Leſſee hath right in the land. So it is if two Joyntenants be of a water, & the one granted the ſeverall Piſcharie.

¶ *Lun leſſa.* The one letteth. If two Joyntenants be of an Advowſon, and (h) the one preſenteth to the Church, and his Clerke is admitted & inſtituted, this in reſpect of the priority ſhall not put the other out of poſſeſſion, but if that Joyntenant that preſenteth dieth, it ſhal ſerve for a title in a Quare impedit brought by the Survivor. But yet if one Joyntenant or Tenant in Common preſent, or if they preſent ſeverally, the Ordinary may either admit or refuſe to admit ſuch a Preſentee, unleſſe they joyne in preſentation, and after the ſixe moneths he may in that caſe preſent by Laps.

(h) 6. E.3. 38. 39. 52. 7.E. 3.20. 21. 17. Ed. 3. 37.b. 22. E. 3. 9. 30. E.3 16. 11. H. 4. 54. 15. E.3. Dar. preſentment. 11. 10 E. 4. 94. 1.H. 7. 1.b. 2. R. 3.Quar.imp. 103. 9. El. Dy. 259. 36.H. 8.Br. Preſent. 27. H. 8. fo. 11. 5. H. 7. 8. 6.E.4. 10.b. Doct. & Stud. 116. 34. H.6. 40. 20. E.3. Quar. imp, 63. F. N.B. 34. V.

But if two or more Coparceners be, (i) and they cannot agree to preſent, the eldeſt ſhall preſent, and if here ſiſter doth diſturbe her, ſhe ſhall have a Quare impedit againſt her, and ſo ſhall the Iſſue and the Aſſigne of the eldeſt, and yet he is tenant in Common with the youngeſt. And in the ſame manner the tenant by the Curteſie of the eldeſt ſhall preſent; but if there before Coparceners and the eldeſt and the ſecond preſent, and the other two preſent joyntly or ſeverally, the Ordinary may refuſe them all, for the eldeſt did not preſent alone but ſhee and one other of her ſiſters. But now let us returne to Littleton.

(i) Brac. li 4. fo. 238. 245. 247. Brit. fo. 223.45. Edw.3. Fines 41 18. E. 3. Quar. imp. 176. 38 H. 6.9 9. E.3. ib. 39. 5. H. 5. 10. F. N.B 34. V.

mente, ou deins l'eſme, en ceſt caſe apres ſon deceaſe le Leſſée poet enter & occupier la moiety a luy Leſſée durant le terme &c. coment que le Leſſée navoit unqs poſſeſſion de ceo en la vie le Leſſor, por force de meſme le leaſe, &c. Et le diverſitie perenter le caſe de grant de Rent-charge avantdit, & ceſt caſe eſt ceo, car en grant de Rent charge p joyntenaunt, &c. les Tenemets demurgent touts foits come ils fueront advant, ſans ceo que alcun ad alcun droit daver alcun parcell de les tenements forſque eux meſmes, & ler Tenements ſont en tiel plyte, come ils fueront devant le charge, &c. Mes ou Leaſe eſt fayt per un Joyntenant a un auter per terme des ans, &c. maintenaunt per force de le Leaſe le leſſée ad droit en meſme la terre, ceſtaſcavoir de tout ceo que a ſon leſſour affiert, & daver ceo per force de meſme le Leaſe durant ſon term. Et ceo eſt la diverſitie.

term beginneth, or within the terme, in this caſe after his deceaſe the Leſſee may enter and occupy the moiety let unto him during the term, &c. although the leſſee had never the poſſeſſion thereof in the life of the Leſſor, by force of the ſame leaſe, &c. And the diverſity between the caſe of a grant of a Rent charge aforeſaid, and this caſe, is this, for in the grant of a Rent charge by a Joyntenant, &c. the tenements remaine alwayes as they were before, without this that any hath an right to have any parcel of the tenements but they themſelves, and the Tenements are in the ſame plight as they were before the charge, &c. But where a leaſe is made by a Joyntenant to another for term of yeares, &c. preſently by force of the Leaſe, the Leſſee hath right in the ſame Land, (*videlicet*) of all that which to the Leſſour belongeth, and to have this by force of the ſame Leaſe, during his term. And this is the

A diverſity,

Sect 289.

¶ Item joyntenāts (ſils voilent) poient faire partition enter eux & la partition eſt aſſets bon, mes de ceo faīt ils ne ſerront compels per la ley. Mes ſils voylēt faīt partitiō de lour proper volunt & agreemēt. le partition eſtoera en ſa force.

ALſo joyntenants (if they will) may make partition between them, and the partition is good enough, but they ſhall not bee compelled to doe this by the Law, but if they will make partition of their own will and agreement, this partition ſhal ſtand in force.

¶ *Poient faire partition.* But this partition muſt be (k) by Deed as hath been ſaid before. But joyntenants for years may (l) make partition without Deed.

(k) Vi. Sect. 259. 318.

(l) 18. El. Dyer 350.

¶ *Ils ne ſerra compell.* This is true regularly, but by the cuſtome of ſome Cities and Boroughs one joyntenant or tenant in Common may compell his companion by writ of partition grounded upon the cuſtome to make partition. But ſince Littleton wrote joyntenants and Tenants in common generally are compellable to make partition by writ framed upon the Statutes (m) of 31. & 32. H. 8. as before hath been ſaid. And albeit they be now compellable to make partition, yet ſeeing they are compellable by writ, they muſt purſue the Statutes and cannot make partition by Parol, for that remaines at the Common Law. And by Littletons Authority herein it ſeemeth to me that if one joyntenant or tenant in Common diſſeiſe another, and the Diſſeiſee bring his aſſiſe for the moiety, that in this caſe, though the Plaintife prayeth it, yet no judgement ſhall be given to hold in ſeveralty, for then at the Common Law there might have been by compulſion of Law a partition between joyntenants and tenants in Common, and by rule of Law the Plaintiffe muſt have judgement according to his plaint or demand.

F. N. B. 62. b.

(m) 31. H. 8. ca. 1. 32. H. 8. ca. 32. Vi. Sect. 264. 247. 259. Mich. 16. & 17. El. 1 340. Inter Harris & Eden adjudge. acc. 18. El. Dyer 250. b. Vi. before in the Chapter of Partition, many bookes cited concerning this matter. 3. E. 3. 48. F. N. B. 9. b. 7 Aſſ. 10. 7. E. 3. 59. 10. Aſſ. 17. 10. E. 3. 40. 43. 12. Aſſ. 15. 17. 12. E. 3. judgement 162. 20. E. 3. Aſſ. 62. 28. Aſſ. 35. 23. Aſſ. 10. 7. H. 6. 4. 19. H. 6. 45. 3. E. 4. 10. Vid. Sect. 247. Britt. fo. 112. Lib. 6. fo. 12. & 13. Morrices Caſe.

If two Joyntenants be (n) of land with Warranty, and they make partition by writing the warranty is deſtroyed, but if they make partition by Writ of partition upon the Statute, the Warrantie remaines becauſe they are compellable thereunto.

(n) 29. E. 3. tit. Gran.

Sect. 291.

¶ Item ſi un joynt eſtate ſoit fait a eux le baron & a ſa feīm & a un tierce perſon, en ceo cas le baron & ſa feīm nont en ley en lour droit forſque le moiety, &c. & le tierce perſon avera tāt cōe le baron & ſa feme ont, s. lauter moity, &c. Et la cauſe eſt, pur ceo q̄ le baron & ſa feme ne cōt forſque un perſon en

ALſo if a joynt eſtate be made of land to husband and wife, and to a third perſon, in this caſe the husband & wife have in law in their right but the moiety, and the third perſon ſhall have aſmuch as the husband and wife, *viz.* the other moiety, &c. And the cauſe is, for that the husband and wife are but one perſon in

¶ *Le baron & ſa feme nont en ley en lour droit forſque le moiety &c.* William Ocle and Ioan his wife (o) purchaſed lands to them two and their heires, after William Ocle was attainted of high treaſon for the murther of the Kings father E. 2. and was executed. Ioan his wife ſurvived him, E. 3 granted the lands to Stephen de Bitterly and his heires. John Hawkins the heire of the ſaid Ioan in a Petition to the King diſcloſeth this whole matter, and upon a Scire facias againſt the Patentee hath judgement to recover the lands,

(o) Mich. 33. E. 3, Coram Rege Salop. in Theſaur.

lands, for the reaſon here yelded by our Author.

Vid. Sect. 665.

But if an eſtate be made to a man and a woman & their heires before marriage, and after they marry, the husband and wife have moieties betwæn them, which is implied in theſe words of our Author, Baron & ſa feme.

(p) Brack. li. 3. fol. 416. 20. H. 3. Diſcont. 52. Lib. 4. fol. 61. Tokers caſe. Pl. Com. 483. Nichols caſe.

¶ *Forſqne vn perſon en Ley.* Brack. ſaith (q) vir & vxor ſunt quaſi vnica perſona, quia caro vna & ſanguis vnus. It hath bin ſaid, that if a reverſion be granted to a man and a woman and their heires, and before attornment they entermarry, and then attornement is made. That the husband and wife ſhall have noe moieties, in this caſe no more than if a Charter of Feoffment be made to a man and a woman. with a Letter of Atturney to make Livery, they entermarry, and then Livery is made ſecundū formam chartæ, in which caſe it is ſaid, that they have no moieties. But certain it is, that if a feoffment were made before the ſtat. of 27. H. 8. of uſes to the uſe of a man (q) & a woman, and their heirs, and they entermarry and then the Statute is made, if the husband alien it is good for a moiety, for the Statute executes the poſſeſſion according to ſuch quality, manner, form and condition, as they had in the uſe, ſo as though it veſt during the coverture, yet the Act of Parliament executes ſeveral moities in them, ſeing they had ſeveral moieties in the uſe.

(q) 4. Mar. Dyer 149. 3. Mar. Dyer. 1222. 22. H. 8. Dyer 32.

(r) 40. Aſſ. p. 7.

If an eſtate be made to a Villeine and his wife (r) being free, and to their heirs, albeit they have ſeveral capacities, viz. the Villeine to purchaſe for the benefit of the Lord, and the wife for her own, yet if the Lord of the Villeine enter, and the wife ſurviveth her husband, ſhe ſhall injoy the whole Land, becauſe there be no moieties betwæn them.

(ſ) Pl. Com. 483. Nichols caſe

A man makes a Leaſe to A. and to a Baron and Feme, viz. to A. for life, to the husband in taile, and to the Feme for years, in this caſe it is ſaid, That each of them hath a third part in reſpect of the ſeveralitie of their eſtates.

11. H. 7.

If a Feoffment be made to a man and a woman, and their heirs with warranty, (ſ) and they entermarry, and after are impleaded and vouch and recover in value, moieties ſhall not be betwæn them, for though they were ſole when the Warranty was made, notwithſtanding at the time when they recovered and had execution, they were husband and wife, in which time they cannot take by moieties.

(t) 11. E. 3 Cui in vita 9. 16. E. 3. ibid. 36. E. 3. ibid. 20. 35 Aſſ. Pl. 15. 31. H. 6. tit. Eſt Congeable 54 19. H. 6. 45. F.N.B. 193. k.

Albeit Baron and Feme (as Littleton here ſaith) be one perſon in Law, ſo as neither of them can give any eſtate or intereſt to the other, yet if a Charter or Feoffment be made to the wife, the husband as Atturney to the Feoffor may make livery to the wife, and ſo a Feme covert that hath power to ſell Land by will, may ſell the ſame to her husband, becauſe they are but Inſtruments for others, and the ſtate paſſeth from the Feoffs or Deviſe.

If a husband, wife, and a third perſon purchaſe Lands to them and their heirs (t) and the husband before the Statute of 32 H. 8. cap. 1. had aliened the whole Land to a ſtranger in fee and died, the wife and the other Joyntenant were Joyntenants of the right, and if the wife had

Ley, & ſont en ſemblable caſe, ſi come eſtate ſoit fait a deux joyntenants, ou lun ad per force de joynture lun moeity en ley, & lauter lauter moeity. &c. Eu meſme le manner eſt lou eſtate eſt fait a le baron & a ſa feme, & as auters deux homes, en tiel cas l'baron & ſa feme nont forſq; la tierce part, & leſt auters deux homes les auters deux parts, &c. Cauſa qua ſupra.

law and are in like caſe as if an eſtate bee made to two joyntenants, where the one hath by force of the joynture the one moeity in law, and the other the other moeity, &c. In the ſame manner it is where an eſtate is made to the husband and wife, and to two other men, in this caſe the husband and wife have but the third part, and the other two men the other two part, &c. *Cauſa qua ſupra.*

¶ Pluis ſerra dit del matter touchant joyntenancy, en le chapter de Tenants en common, & tenant per Elegit, & tenant per ſtatute Merchants.

More ſhall bee ſaid of the matter touching joyntenancy in the chapter of Tenants in Common and tenant per Elegit, and tenant by Statute Merchant.

had died, the other Joyntenant ſhould have had the whole right by ſurviver, for that they might have joyned in a Writ of Right, and the diſcontinuance ſhould not have barred the entry of the Survivor, for that he claimed not under the diſcontinuance, but by title paramount above the ſame by the firſt feoffment, which is worthy of obſervation. But if the husband had made a feoffment in fee but of the moiety, and he and his wife had died, their moiety ſhould not have ſurvived unto the other.

And for the better underſtanding of this diverſity divers things are worthy of obſervation.

Firſt, That a right of action and a right of entry may ſtand in Joynture, for at the Common Law the alienation of the husband was a diſcontinuance to the wife of the one moiety, and a diſſeiſin of the other, ſo as after the death of the husband, the wife hath a right of Action to the one moiety, and the other Joynture a right of Entry into the other, but they are Joyntenants of the right, becauſe they may joyn in a writ of Right. Vide Sect. 302.

Secondly, That a right of Action or a bare right of entry cannot ſtand in joynture with a Freehold or Inheritance in poſſeſſion, and therefore if the husband make a feoffment of the moiety, this was a diſcontinuance of that moiety, * and the other Joyntenant remained in poſſeſſion of the Freehold and Inheritance of the other moiety, which for the time was a ſeverance of the Joynture, and ſo are all the books which ſeemed to vary amongſt themſelves, clearly reconciled. * Vid. the Statute of 32 H.8.2. it is no diſcontinuance at this day.

If two Joyntenants be of a rent, and the one of them diſſeiſe the Tenant of the Land, (u) this is a ſeverance of the Joynture for a time, for the moiety of the rent is ſuſpended by unity of poſſeſſion, and therefore cannot ſtand in Joynture with the other moiety in poſſeſſion. And this is to be obſerved, That there ſhall never be any Survivor, unleſs the thing be in joynture at the inſtant of the death of him that firſt dieth: for the rule is, Nihil de re accreſcit ei qui nihil in re quando jus accreſcebat, habet. (u) Pl. Com. 419. m. Bratchbridges caſe.

Alſo if a man deviſeth Lands to two, to have and to hold to the one for life, and the other for years, they are no Joyntenants, for a ſtate of Freehold cannot ſtand in Joynture with a term for years: and a reverſion upon a Freehold cannot ſtand in joynture with a Freehold and Inheritance in poſſeſſion, as ſhall be ſaid in the next Chapter. Neither can a Perſon in the right of a politick capacity, ſtand in Joynture with Perſons in a natural capacity, as ſhall be ſaid hereafter. 46 E.3.21. 19 H.6.45. 37 H.8.8. 3 E.4.10.

If two Femes be jointly ſeiſed, and they take Barons, and the Barons joyn in a alienation and die, the wives are Joyntenants of the right, and may join in a Writ of Right, and yet they may have ſeveral Writs of Cui in vita at their election, but when they have recovered in thoſe ſeveral Writs, they ſhall be Joyntenants again. But if the Barons had alienated ſeverally, this had been a ſeverance of the Joynture for a time, for the reaſon aforeſaid.

If two Joyntenants, the one for life, and the other in fee, loſe by default, the one ſhall have a Writ of Right, and the other a Quod ei deforceat, and yet when they have ſeverally recovered, they ſhall be Joyntenants again. So it is if two Joyntenants be diſſeiſed, and an Aſſiſe is brought, and the one is ſummoned and ſevered, and the other recover the moiety, and after another Aſſiſe is brought, and he that recovered is ſummoned and ſevered, and the other recover, albeit they ſeverally recover, yet they are joyntenants again.

And in all caſes where the joyntenants purſue one joynt remedy, and the one is ſummoned and ſevered, and the other recover, he that is ſummoned and ſevered ſhall enter with him: but where their remedies be ſeveral, there the one ſhall not enter with the other till both have recovered, and the ſame Lawis of Coparceners. If lands (w) be demiſed for life, the remainder to the right heirs of I. S. and of I. N. I. S. hath iſſue and dieth, and after I. N. hath iſſue and dieth, the iſſues are not joyntenants, becauſe the one moiety veſted at one time, and the other moiety veſted at another time. And yet in ſome caſes there may be joyntenants, and yet the Eſtate may veſt in them at ſeveral times. Vid. Lit. cap. Remitter, the laſt caſe. 10 H.6.10. 31 H.6. tit. Entre congeable, 46 E 3.21.b. 3 E.4.10. 37 H.6.8. (w) 24 E.3.29. 18 E.3.28. 38 E. 3.

If a man (x) make a Feoffment in fee to the uſe of himſelf and of ſuch wife as he ſhould afterwards marry, for term of their lives, and after he taketh wife, they are joyntenants, and yet they come to their Eſtates at ſeveral times. (x) 17 El. Dyer Brents caſe.

And ſo it is if I diſſeiſe one to the uſe of two, and the one agrees at one time, and the other at another, yet are they joyntenants.

In this Section are three (&c.) the firſt and ſecond are at large explained before, the laſt intended where more parties take then three.

Chap.4. Of Tenants in Common. *Sect.*292.

¶ TEnants en Common ſont ceux, que ont terres ou tenements en Fée ſimple, Fée tail, ou pur terme de vie, &c. les queux ont tielx terres ou Tenements per ſeverall titles, & nemy per joynt title, et nul eux ſcavoit de ceo ſon ſeverall, mes ils doient per la Ley occupier tiels terres ou Tenements en Common & pro indiviſo a prender les profits en Common. Et pur ceo que ils aviendront a tielx terres ou Tenements per ſeverall titles & nemy per un joynt title, & lour occupation & poſſeſſion ſerra pur la ley perenter eux en Common, ils ſont appels Tenants en Common. Sicome un home enfeoffa deux Joyntenants en Fee, et lun de eux alien ceo que a luy affiert a un auter en Fée, ore le Alienée et lauter Joyntenant ſont Tenants en Common, pur ceo que ils ſont eins en tiels Tenements per ſeverall titles, car lalienée vient eins en la moietie per la feoffment dun des Joyntenants, & lauter Joyntenant ad lauter moietie, per force de l'primer Feoffment fait a luy, et a ſon compagnion, &c. Et iſſint ils ſont eins per ſeverall titles, ceſtaſcavoir, per ſeverall Feoffements, &c.

TEnants in Common are they which have Lands or Tenements in Fee-ſimple, Fee tail, or for term of life, &c. and they have ſuch Lands and Tenements by ſeveral titles, and not by a joynt title, and none of them know of this his ſeverall, but they ought by the Law to occupy theſe Lands or Tenements in common, and *pro indiviſo*, to take the profits in Common. And becauſe they come to ſuch Lands or Tenements by ſeveral Titles, and not by one joynt Title, and their occupation and poſſeſſion ſhall be by Law between them in Common, they are called Tenants in Common. As if a man infeoffe two Joyntenants in Fee, and the one of them alien that which to him belongeth, to another in Fee, now the Alienee and other Joyntenant are Tenants in Common, becauſe they are in in ſuch Tenements by ſeveral titles, for the Alienee cometh to the moiety by the Feoffment of one of the Joyntenants, and the other Joyntenant hath the other moiety by force of the firſt feoffment made to him and to his Companion, &c. And ſo they are in by ſeverall Titles, that is to ſay, by ſeverall Feoffments, &c.

Flet. lib.3. cap.4. ¶ Littleton having ſpoken of Parceners which are only by deſcent, and of Joyntenants which are only by purchaſe and by joynt title, ſpeaketh now of Tenants in Common, which may be by three meanes, viz. by Purchaſe, by Deſcent, or by Preſcription, as hereafter in this Chapter ſhall appear.

¶ Or

¶ *Ou pur terme de vie, &c.* Here (&c.) implieth pur terme Dauter vie, or for tearm of years, or for any other fixed Inheritance in the Law.

And here appeareth, that the eſſential difference between Joyntenants and Tenants in Common, is that Joyntenants have the Lands by one joynt Title, and in one Right, and Tenants in common by ſeveral Titles, or by one Title and by ſeveral Rights, which the reaſon that Joyntenants have one joynt Freehold, and Tenants in Common have ſeveral Freeholds, onely this property is commonto them both, viz. that their occupation is individed, and neither of them knoweth his part in ſeveral. Vide Sect.296.

The Example that Littleton putteth in this Section is perſpicuous, and needeth no explication.

Sect. 293.

¶ ET eſt aſcavoir, que quant il eſt dit en aſcun Lieur, q̄ home eſt ſeiſie en fee ſauns pluis dire, il ſerra entendue in Fee ſimple, car il ne ſerra entendue per tiel paroll (en fee) que home eſt ſeiſie en fee taile, ſinon que ſoit mis a ceo tiel addition, fee taile, &c.

AND it is to be underſtood, that when it is ſaid in any Book, that a man is ſeiſed in fee, without more ſaying, it ſhall be intended in fee ſimple, for it ſhall not be intended by this word (in fee) that a man is ſeiſed in fee tail unleſſe there be added to it this addition fee tail, &c.

¶ This is evident and ſecundum excellentiam, it ſhall be taken for the higheſt and beſt fee, and that is fee ſimple. Vide decant. Sect.99.

¶ *Addition in fee taile, &c.* Here is implied a maxime in Law, viz. that Additio probat minoritatem, as it is vulgarly ſaid, the younger ſon giveth the difference.

Sect. 294.

¶ ITem ſi 3. joyntenants ſont, & un de eux alien ceo que a luy affiert a un auter home en fee, en ceſt cas lalienee eſt tenant en common obeſque les auters deux joyntenants, mes untore les auters 2. joyntenants ſont ſeiſies des deux parts joyntment que remaine, & de ceux deux parts le ſurvivor enter eux deux tient lieu, &c.

ALſo if three Joyntenants be, and one of them alien that which to him belongeth to another man in fee. In this caſe the alienee is Tenant in common with the other two Joyntenants, but yet the other two Joyntenants are ſeiſed of the two parts which remain joyntly, and of theſe two parts the Survivor between them two holdeth place, &c.

¶ This needeth no explication, onely the (&c.) in the end of this Section implieth that the ſame Law is where there be more Joyntenants then three.

Sect. 295.

¶ ITem ſi ſoient deux Joyntenants en fee, & lun dona ceo que a luy affiert a un auter en le tayle, & lauter done ceo que a luy affiert a un auter en le tayle, les donées ſont tenants en common, &c.

ALſo if there be two Joyntenants in fee, and the one giveth that to him belongeth to another in tail, and the other giveth that to him belongs to another in tail, the Donees are Tenants in common, &c.

Vide Sect. 300.

¶ THe (&c.) in the end of this Section implieth, that ſo it is when a Leaſe for life, or pur auter vie is made, for in that caſe alſo the Leſſees are Tenant in common.

Sect. 296.

¶ *SI terres ſont dones a* 2. *homes, &c.* Of this ſufficient hath been ſpoken in the Chapter (a) of Joyntenants.

(a) Sect. 283.

¶ *Mes ſi terres ſont dones a* 2. *Abbes, &c.* In this caſe of the two Abbots in reſpect of their ſeveral capacities, albeit the words be joynt, yet the Law (b) doth adjudge them to be ſeverally ſeiſed.

(b) 7 H. 7. 9. 16 H. 7. 15. b. 3 H. 7. 11. 10 E. 4. 16. b. 5 H. 7. 25. 18. E. 27. 49 E. 3. 25. b. Vide Sect. 300.

The (&c.) in the end of this Section implieth, that ſo it is of any (c) body Politique or Corporate be they regular as dead perſons in Law (whereof our Authour here ſpeaketh) or Secular: as if

(c) 4 H. 7. 45. 18 E. 3. 27. b.

¶ MEs ſi terres ſont dones a 2. homes & les heires de lour deux corps engendrés, les donees ount joint eſtate pur terme de lour vies, & ſi cheſcun de eux ad iſſue & deby, lour iſſues tiendront en common, &c. Mes ſi terres ſont donées, a deux Abbes, ſicome al Abbe de Weſtminſter, & al Abbe de S. Albon, a aver & tener a eux & a lour ſucceſſors, en ceſt cas ils ont maintenant al commencement eſtate en common, & nemy joynt eſtate. Et la cauſe eſt, pur ceo que cheſcun Abbe, ou auter Soveraigne de meaſon de Religion, devant que il fuit fait Abbe, ou Soveraigne, &c. il fuit forſqz come mort perſon en ley, & quant il eſt fait Abbe, il eſt come un home perſon able en ley tantſolm̃t a purchaſer & aver terres ou tenements, ou

BUt if lands be given to two men, and to the heirs of their two bodies begotten, the Donees have a joynt Eſtate for Tearm of their lives, and if each of them hath iſſue and die, their iſſues ſhall hold in Common, &c. But if lands be given to two Abbots, as to the Abbot of *Weſtminſter*, and to the Abbot of Saint *Albons*, to have and to hold to them and to their Succeſſors. In this caſe they have preſently at the beginning an eſtate in Common, and not a joynt eſtate. And the reaſon is for that every Abbot or other Soveraigne of a houſe of religion, before that he was made Abbot or Soveraigne, &c. was but as a dead perſon in Law, and when he is made Abbot, he is as a man perſonable in Law onely to purchaſe and have lands or Tenements or other things to the uſe of his Houſe, and

auters

auters choſes al uſe de ſa mealon, & nemy a ſon pꝛoper uſe, come auter ſecular home poit, & pur ceo al commencement de lour purchaſe ils ſont tenants en common, & ſi lun de eux debie, Labbe que ſurveſquiſt navera my tout per le Survivour, mes le ſucceſſoꝛ de Labbe que mozuſt tiendꝛa le moiety en common ove Labbe que ſurveſquiſt, &c.

not to his own proper uſe, as another ſecular man may, and therefore at the beginning of their purchaſe they are tenants in common, and if one of them die, the Abbot which ſurviveth ſhall not have the whole by ſurvivor, but the Succeſſor of the Abbot which is dead, ſhall hold the moiety in common with the Abbot that ſurviveth, &c.

lands be given to two Biſhops, to have and to hold to them two and their Succeſſours: Albeit the Biſhops were never any dead perſons in Law, but always of capacitie to take, yet ſeing they take this Purchaſe in their politique Capacitie, as Biſhops, they are preſently

Tenants in Common, becauſe they are ſeiſed in ſeveral rights, for the one Biſhop is ſeiſed in the right of his Biſhoppicke of the one moiety, and the other is ſeiſed in the right of his Biſhoppicke of the other moiety, and ſo by ſeveral Titles and in ſeveral Capacities, whereas Joyntenants ought have it in one and the ſame right and Capacity, and by one and the ſame joynt Title. The like Law is if Lands be given to two Parſons and their Succeſſors or to any other ſuch like Eccleſiaſticall bodies Politique or Incorporate as hath been ſaid.

If a Corrody be granted to two men and their heirs, in this caſe becauſe the Corrody is incertain and cannot be ſevered, it ſhall amount to a ſeveral grant to each of them one Corrody, for the perſons be ſeveral, and the Corody is perſonal.

Sect. 297.

¶ Item ſi terres ſoient dones a un Abbe, & a un Secular home, A aver & teñ a eux, s. al Abbe, & a ſes ſucceſſoꝛs, & al Secular home a luy & a ſes heires, donques ils ount eſtate en common, Cauſa qua ſupra.

ALſo if lands be given to an Abbot and a Secular man, to have and to hold to them, *viz.* to the Abbot and his Succeſſors, and to the Secular man, to him and to his heirs, They have an eſtate in common, *Cauſa qua ſupra.*

¶ AND ſo it is if Lands be given to the Parſon of Dale, and to a Layman, to have and to hold to them, that is to ſay, to the Parſon and his Succeſſors, and to the Lay-man and his heirs, they are preſently Tenants in Common for the cauſes abovelaid. So of a Biſhop, &c. Et ſic de ſimilibus. F.N.B. 49 l. 16 E.3. Joindre in action 27. 16 Aſſ. p.1. 3 R.3.16. 7 H.7.9. 13 H.8.14.

If Lands be given to the King and to a Subject. To have and to hold to them and to their heirs, yet they are Pl. Com. in Seig. Barkleys caſe. fol.

Tenants in Common, and not Joyntenants, for the King is not ſeiſed in his natural Capacity, but in his Royal and Politique Capacity, in jure Coronæ, which cannot ſtand in Joynture with the ſeiſin of the Subject in his natural Capacity. So likewiſe if there be two Joyntenants and the Crown deſcend to one of them the Joynture is ſevered, and they are become Tenants in common. But if Lands be given to A. de B. Biſhop of N. and to a Secular man to have and to hold to them two, and to their heirs. In this caſe they are Joyntenants, for each of them take the lands in their natural Capacity.

If lands be given to John Biſhop of Norwich and his Succeſſors, and to John Overall Doctor of Divinity and his heirs being one and the ſame perſon, he is Tenant in Common (d) with himſelf. But our Authors rules do not hold in Chattels, Reals or Perſonals; for if a Leaſe for years be made, or a Ward granted to an Abbot and a Secular man, or to a Biſhop and Secular man, or if goods be granted to them, they are Joyntenants, becauſe they take not in their Politique Capacity. (d) 13 H.8.14. 16 H.7.14. 9 H.6.25. 45 E.3.25.

Sect.

Sect. 298.

¶ AND the reason is, because they have several Freholds and an occupation Pro indiviso.

Here is to be observed that the Habendum doth sever the premisses that Prima facie seemed to be joynt, for an expresse estate controles an implied estate, as hath been said.

¶ Item si terres soient dones a deux a aver & tener, s. lun moiety a lun & a ses heires, & lauter moiety a lauter & a ses heires, ils sont tenants en common.

ALso if lands be given to two to have and to hold, s. the one moiety to the one and to his heirs, and the other moiety to the other, and to his heirs, they are Tenants in common.

Sect. 299.

11 Ass. Pl.16.

45 E.3.12. 44 Ass.11.

21 E.4.22. b.

AND the like Law is, if the feoffment be made of a third part or a fourth part, &c. And if there be an Advowson appendant, they are also Tenants in common of the Advowson. And albeit it is said that such a feoffment of a moiety or third part, &c. is not good without writing, for that (as they say) a man cannot create an uncertain estate in land by Parol, yet is the Law clear that such a feoffment is good by Parol without writing, and such an uncertain estate shall passe by Livery, and so it appeareth in our Books.

¶ Item si home seisi de certain terres enfeoffa un auter de le moiety de mesme la terre sans alcun parlance de assignment ou limitation de mesme le moiety en severalty al temps del feoffment, donques le feoffée & le feoffor tiendroit lour parts de la terre en common.

ALso if a man seised of certain lands infeoffe another of the moiety of the same land without any speech of assignement or limitation of the same moiety in severalty at the time of the feoffment, then the Feoffee and the Feoffor shall hold their parts of the land in common.

21 E.4.22. b.

5 E.3.23.67.
Temps E.1. Feoffments 115.
34 E.1. quar. imped.179.
10 Eliz. Dier.28.
22 E.3.6. Feoffments 116.
6 E 3.56. 39 E.3.38.
9 E.3. 16. 17 E.3.3.
18 E.3. 43. 43 E.3.26.
23 Ass.8. 33 H.6.5. a.

If a Verdict finde that a man hath (Duas partes manerii, &c. in tres partes divisas;) this shall not be intended to be in Common, but if the verdict be in tres partes dividendas, then it seemeth that they are Tenants in common by the intendment of the Verdict.

But if a man be seised of a Mannor whereunto an Advowson is appendant, and maketh a feoffment of three Acres parcell of the Mannor together with the Advowson to two. To have and to hold the one moiety together with the moiety of the Advowson to the one and his heirs, and the other moiety together with the other moiety of the Advowson to the other and his heirs this cannot be good without Deed, for the Feoffor cannot annex the Advowson to these three Acres, and disannex it from the rest of the Mannor without Deed.

Sect. 300.

¶ E Test ascavoir, que en mesme le maner come est avantdit de tenants en common, de terres ou tenits en fée simple, ou en fée taile, en mesme le maner poit estre

AND it is to be understood that in the same manner as is aforesaid of tenants in common of lands or tenements in fee simple, or in fee tail, in the same

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de tenants a terme de vie. Sicome deux joyntenants ſont en fee, & lun leſſa a un home ceo que a luy affiert pur terme de vie, & lauter joyntenant leſſa ceo que a luy affiert a un auter pur terme de vie, &c. les deux leſſees ſont tenants en common pur lour vies, &c.

manner may it be of Tenants for term of life. As if two joyntenants be in fee, and the other letteth to one man that which to him belongeth for term of life, and the other joyntenant letteth that which to him belongeth to another for term of life, &c. the ſaid two Leſſees are Tenants in common for their lives, &c.

Vid. Sect. 295. Where this is ſufficiently explained before.

Sect. 301.

¶ Item ſi hom leſſa terres a deux homes pur terme de lour vies, et lun granta tout ſon eſtate de ceo que a luy affiert a un auter, donqs lauter tenant a terme de vie, & celuy a q̃ le graunt eſt fait ſont tenants en common, durant le temps que ambideux les leſſees ſont ẽ vie.

ALſo if a man let lands to two men for term of their lives, and the one grants all his eſtate of that which belongeth to him to another, then the other Tenant for term of life, and he to whom the grant is made are Tenants in common during the time that both the leſſees be alive.

¶ Et memorandum, que en touts auters tiels caſes, coment que ne ſont icy expreſſement moves ou ſpecifies, ſi ſont ẽ ſemblabl' reaſon, ſont en ſemblable ley.

¶ And *memorandum*, that in all other ſuch like caſes although it be not here expreſly moved or ſpecified if they be in like reaſon, they are in the like Law.

¶ AND ſo it is if lands be letten to two for term of their lives, Et eorum alterius diutius viventi, and one of them granteth his part to a ſtranger whereby the joynture is ſevered, and dyeth, here ſhall be no ſurbidour, but the Leſſee ſhall enter into the moiety, and the ſurbidour ſhall have no advantage of theſe words. 30 Aſſ. 18. Et eorum alterius diutius viventi for two cauſes; *Firſt*, for that the Joynture is ſevered. *Secondly*, for that thoſe words are no more then the Common Law would have implyed without them. and Expreſſio eorum quæ tacitè inſunt nihil operatur. Hereby it appeareth that in caſe of Leaſes for life it is more beneficial for the Leſſor to have the joynture ſevered then to have it continue.

¶ *Si ſoient en ſemblable reaſon ſont en ſemblable ley.* Here Littleton citeth one of the maximes Vid. Sect. 1.

of the Common Law, that wheresoever there is the like reaſon, there is the like Law, Ubi eadem ratio, ibi idem jus, or Ubi eadem ratio, ibi idem jus eſſe debet, for Ratio eſt anima legis. And therefore Ratio poteſt allegati deficiente lege. But it muſt be Ratio vera & legalis & non apparens. And here it appeareth that Argumentum à ſimili is good in Law. Sed ſimilitudo legalis eſt caſuum diverſorum inter ſe collatorum ſimilis ratio, quod in uno ſimilium valet, valebit in altero, diſſimilium diſſimilis eſt ratio.

Sect.

Sect. 302.

¶ *Si deux Joyntenants en fee, &c.*

This needeth no explanation.

¶ *Et ſur ceo caſe un queſtion poet ſurder* &c.

Vid. 33 H. 6. 4. b.

Here Littleton maketh a queſtion, and ſheweth the reaſons on both ſides, and concludes with a Quære. (When Littleton maketh a queſtion, and ſheweth the reaſon on both ſides, the latter is ever his own, (a) and the better. But Time hath made this queſtion without queſtion, for now all agree, That the joynture is ſevered for the time, according to the latter opinion here ſet down in Littleton, whoſe reaſons are unanſwerable: for many times the change of the freehold makes an alteration or change of the reverſion. As if Tenant in tail, or the husband ſeiſed in the right of his wife, or tenant for life make a leaſe for life of the Leſſe, in every of theſe caſes the Leſſor doth gain a new reverſion by wrong, as ſhall be ſaid more at large in the Chapter of Diſcontinuance, and if the elder brother grant the reverſion (excepant upon a Freehold) for life, it ſhall cauſe poſſeſſio fratris, as hath been ſaid.

(a) Vid. Sect. 240. 375. 439. 447. 462. 463. 464. 482. 483. 648. 720. 729. vid. Sect. 170.

Vid. Sect. 8. 7 H. 5.

¶ *Per meſme le reaſon le reverſion que eſt dependant ſur meſme le franktenement eſt ſever de le Joynture, &c.*

7 H. 7. 9.

If two Joyntenaunts in fee be, and they both join in a Leaſe to an Abbot and a ſecular man for term of their lives, here the reverſion that is dependant upon ſeverall Freeholds is ſevered. And ſo it is if they join in a Leaſe to two ſecular men, to have and to hold the one moiety to the

¶ Item ſi deux joyntenants en Fee ſont, & lun Leſſa ceoque a luy affiert a un auk pur terme de ſa vie, le Tenant a terme de vie durant ſa vie, & lauk Joyntenaunt que ne leſſa paſſe, ſont Tenants ẽ common. Et ſur ceo caſe un queſtion puit ſurder ſicome en tiel caſe mittomus que le leſſor ad iſſue & dye, vivant lauter Joyntenant ſon companion, & vivant l' tenant a terme de vie, le queſtion poet eſtre tiel: Si le reverſion de la moetie que le leſſor avoit diſcendra al iſſue le leſſor, ou que lauter joyntenant avera cel reverſiõ per le ſurvivor. Aſcuns ont dit en ceſt caſe, que lauk joyntenant avera cel reverſiõ per le ſurvivor, & lour reaſon eſt tiel, ſ. que quant les jointenants fueront joyntenant ſeiſies en fe ſimple, &c. coment que lun de eux fiſt eſtate de ceo que a luy affiert pur terme de ſa vie, & comt que il ad ſever le franktenement de ceo que a luy

ALſo if there be two Joyntenants in Fee, and the one letteth that to him belongeth to another for term of his life, the Tenant for term of life during his life, and the other Jointenant which did not let, are Tenants in Common. And upon this caſe a Queſtion may ariſe, as in ſuch caſe admit that the Leſſor hath iſſue and dye, living the other Joyntenant his Companion, and living the Tenant for life, the Queſtion may be this, Whether the reverſion of the moiety which the Leſſor hath ſhall deſcend to the iſſue of the Leſſor, or that the other Joyntenant ſhall have this reverſion by the Survivor. Some have ſaid in this caſe, that the other jointenant ſhall have this reverſion by the Survivor: and their reaſon is this, s. That when the Joyntenants were jointly ſeiſed in Fee ſimple, &c. although that the one of them make an eſtate of that to him belongeth for term of his life, and although that he hath ſevered the

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affiert per l'leaſe, uncore il nad ſever l'fée ſimple, mes le fée ſimple demurt a eux joyntment cõe il fuyt advant. Et iſſint ſemble a eux, que lauter Joyntenant que ſurvesquiſt, avera le reverſion per l'Survivour, &c. Et auters ont dit le contrary, & ceo eſt lour reaſon, ſ, que quaunt lun des Joyntenaunts leſſa ceo que a luy affiert a un auter pur terme de ſa vie, per tiel Leaſe le Franktenement eſt ſever d'le joynture. Et per meſme le reaſon le Reverſion que eſt dependant ſur meſme le Franktenement, eſt ſever de le Joynture. Auxy ſi le Leſſour uſt reſerve a luy un annuall Rent ſur le Leas, le Leſſor ſolement averoit le Rent, &c. le q̃l eſt un pꝛoue q̃ le reverſiõ eſt ſolement en luy, & que lauter nad riens en cel reverſion, &c. Auxy ſi le Tenant a term de vie fuit impleade, &c. & fiſt default apꝛes default, donques le Leſſor ſerroit de ceo ſol'ment receive a defender ſon dꝛoit, & freehold of this which to him belongs by the leaſe, yet hee hath not ſever'd the fee ſimple, but the fee ſimple remains to them joyntly as it was before. And ſo it ſeemeth to them, that the other Ioyntenaunt which ſurviveth ſhall have the reverſion by the ſurvivor, &c. And others have ſaid the contrary, & this is their reaſon, s. that when one of the Ioyntenants leaſeth that to him belongeth, to another for term of his life, by ſuch Leaſe the freehold is ſevered frõ the joynture. And by the ſame reaſon the reverſion which is depending upon the ſame freehold is ſever'd frõ the joynture. Alſo if the leſſor had reſerved to him an annuall Rent upon the leaſe, the leſſor onely ſhould have had the Rent, &c. the which is a proofe, the the reverſion is onely in him, and that the other hath nothing in the reverſion, &c. Alſo if the Tenant for term of life were impleaded, & maketh default after default, the leſſor ſhall be only receiv'd for this, to defend one for life, & the other moiety to the other for life, for both theſe caſes are warranted by the authoritie of Littleton.

If two Joyntenants be of a Leaſe for twenty one years, and the one of them letteth his part for certaine yeares, part of the terme, the Joynture is ſevered, and ſurvivor holdeth not place, for a terme for a ſmall number of yeares is as high an intereſt, as for many more yeares, and ſo was it reſolved Hil. 18. El. Reginæ, in Communi Banco, * which I my ſelf heard. * Hil. 18. Eliz.

If two Coparceners be in fee, and the one make a Leaſe for life, this is no ſeverance of the Coparcenarie, for notwithſtanding the Lord ſhall make one adowrie upon them both.

But if two Joyntenaunts be, and one maketh a Leaſe for life this is a ſeverance of the joynture, as Littleton here taketh it and ſeverall adowries ſhall be made upon them.

¶ *Auxy ſi le Leſſor uſt reſerva annual rent, le Leſſor ſolement avera le rent, &c.* But if two Joyntenants make a Leaſe for life, reſerving a rent to one of them, the rent ſhall enure to them both, becauſe the reverſion remains in joynture, unleſſe the reſervation be by Deed indented, and then he onely to whom it is reſerved ſhall have it. But if they make a Leaſe by Deed indented, reſerving or ſaving the reverſion to one of them, that is void, becauſe they had the reverſion before, but the rent is newly created. 5. E. 4. 4. 2. 27. H. 8. 18. 2. 7. E. 4. 25. 15. Ed. 3. Br. 398

And ſo it is if ſuch a Leſſee for life ſhould ſurrender to one of them, it ſhall enure to them both, for that they have a joynt reverſion. But if the Leſſee grant his eſtate to one of them, no part of it ſhall enure to his Companion, becauſe for the moietie belonging to his Companion, it is in eſſe 3. E. 4. 4.

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in him to whom the grant is made, the reverſion to the other in fee.

28.H.6.21. b. 2.R. 3. tit. Extinguiſhment. 3.

If two Joyntenants make a Leaſe for life, the remainder to his Companion in fee, this is a good remainder of his moietie to his Companion.

¶ *Donques le feoffor ſerra de ceo ſolement receive, &c.*

¶ *Receive*, Receit, Receptio, is in many caſes where a perſon partie to a Writ, or an eſtranger thereunto, to whom a reverſion or remainder appertaineth, ſhall in fault of another perſon be received to defend his or her Freehold or Inheritance, the Law ſaith, admittatur, &c. And this admiſſion or receipt is given by ſundrie ſtatutes, (f) (and this is that which the Civilians call, Admiſſio tertiæ perſonæ pro intereſſe.) Et in caſibus prædictis quæ concurrunt Actiones: Vna inter petentem, & tenentem, & alia inter tenentem ius ſuum oſtendentem, & petentem.

(f) W. 2. cap. 3. 20. E. 1. Statute de Defenſione Juris. 13. R. 2. cap. 16.

¶ *Pur ceo que vn Franktenement ne poet per nature de Joynture, eſte annexe a vn reuerſion.* And this is the principall reaſon, and of this ſufficient hath been ſaid in the chapter of Joyntenants, Sect. 291.

¶ *&c.* This &c. in the end of this Section, implieth any other heire lineall or collaterall.

ſon Compaignion en teſt caſe en nul manner ſerroit receive, le quel prove le reverſion del moietie deſtre tantſolement en le Leſſor: Et ſic per conſequens, ſi le Leſſour morust vivant le Leſſee pur terme de vie, l' reverſion diſcendra al heire de Leſſour, & nemy deviendra a lauter Joyntenaunt per le ſurvivor, Ideo quære. Mes en teſt caſe ſi celuy Joyntenant que ad l' franktenement ad iſſue & devie, vivant le leſſor & leſſee, donques il ſemble, que meſme liſſue aura teſt moietie en demeſne, & en fee per diſcent, pur ceo que un Franketenement ne poet per nature de Joynture eſtre annexe a un reverſion, &c, & il eſt certaine, que celuy que leſſa fuit ſeiſie de le moietie en ſon demeſne come de fee, & nul avera aſcun joynture en ſon Franktenement, Ergo ceo diſcendra a ſon iſſue, &c. Sed quære.

his right, and his Companion in this caſe in no manner ſhall be received, the which proveth the reverſion of the moietie to be onely in the Leſſor: & ſo by conſequent if the Leſſour dieth, living the Leſſee for terme of life, the reverſion ſhall deſcend to the heire of the Leſſour, and ſhall not come to the other Joyntenant by the ſurvivor, *Ideo quære.* But in this caſe if that joyntenant which hath the Freehold, hath iſſue, & dies liveing the Leſſor and the Leſſee, then it ſeemeth that the ſame Iſſue ſhall have this moietie in Demeſne, & in fee deſcent, for that a Freehold cannot by nature of Joynture bee annexed to a Reverſion, &c. And it is certaine, That he which leaſed was ſeiſed of the moietie in his Demeſne as of Fee, and none ſhall have any Joynture in his Freehold, therefore this ſhall deſcend to his Iſſue, &c. *ſed quære.*

Section

Sect. 303.

¶ Mes ſi iſſint ſoit q̄ la ley en teſt cas eſt tiel, que ſi leſſor deby vivant le Leſſee, et vivant lauter joyntenant, que ad le frāktenement de lauter moiety, que le reverſiō diſcendra al iſſue del leſſor, donque eſt le joynture, & title q̄ alcū ō eux poit aver per le ſurvivor, et le droit ō le joynture anient, et tout ouſterment defeat a touts jours. En meſme le maner eſt, ſi celuy joyntenāt que ad le frāktenement deby, vivāt le leſſor, & le leſſee, ſi la ley ſoit tiel q̄ ſon frāktenement et fee q̄ il ad en le moiety, diſcendra a ſon iſſue, dōques le joynture ſera defeat a touts jours.

BUt if it be ſo that the Law in this caſe be ſuch, that if the Leſſor die, living the Leſſee, and living the other Joyntenant which hath the freehold of the other moiety, that the Reverſion ſhall deſcend to the Iſſue of the Leſſor, then is the Joynture and title which any of them may have by the Survivor, and the right of the Joynture taken away, and altogether defeated for ever. In the ſame manner it is, if that Joyntenant which hath the freehold dye, living the leſſor and the leſſee, if the Law be ſo as his freehold and fee which he hath in the moiety ſhall deſcend to his iſſue, then the Joynture ſhall be defeated for ever.

¶ *Donque eſt le joynture & title, &c. & le droit de le joynture anient, &c.*

And the reaſon this is, for if the Joynture be ſevered at the time of the death of him that firſt deceaſed, the benefit of the ſurvivor is utterly deſtroyed for ever, as hath been ſaid * afore in the Chapter of Joyntenants. But in the caſe aforeſaid, if Tenant for life dyeth in the life of both the Joyntenants, they are Jointenants again as they were before. * vid. Sect. 291.

If two Joyntenants be in fee, and the one letteth his part to another for the life of the Leſſor, and the Leſſor dieth, ſome ſay that his part ſhall ſurvive to his Companion: for by his death the leaſe was determined. And others hold the contrary, and their reaſon is. Firſt, for that at the time of his death the the Joynture was ſevered; for as long as he lived the Leaſe continued. And ſecondly, that notwithſtanding the act of any one of the Joyntenants there muſt be equal benefit of Survivor as to the Freehold. But here if the other Joyntenant had firſt died, there had been no benefit of Survivor to the Leſſor without queſtion.

Sect. 304.

¶ Item ſi trois joyntenants ſont, et lun releſſa p̄ ſon fait a un ō ces cōpanions tout le droit que il avoit en le terre, donques ad celuy a que le releaſe eſt fait le tierc̄ part de les ter-

AND if three joyntenants be, and the one releaſe by his deed to one of his companions all the right which he hath in the Land, then hath he to whom the releaſe is made the third part of

¶ Upon this caſe theſe two things are to be obſerved. Firſt, that in this caſe this releaſe doth enure by way of mitter leſtate and not * by way of extinguiſhment, for then the Releaſe ſhould enure to his companion alſo, and he is in the Per by him that maketh the Releaſe. (a) But if he had releaſed to the other two then had it wrought no degre * El. Dier 263. 19 H.6.17.

(a) 40 E.3.41.13 E.3.tit.Garr. 33 E.3. releaſe 43. 22 H.6.42. 14 E.3.Briefe 28. 19 H.6.17. 33 H.6.5. 28 H.6.2. 37 H.8. Alienation 38. 8 H.4.8. 10 E.4.3.

græ but in ſuppoſition of Law, for many purpoſes they to whom the Releaſe is made (as hath been ſaid) ſhall be ſuppoſed in from the firſt feoffor, as they ſhall deraign the firſt warranty for the whole.

(b) 9 Eliz. Dier 263. 19 H.6.17.

(b) The ſecond thing to be obſerved is, that he to whom the releaſe is made hath a fee ſimple without theſe words (heires) as hath been touched in the firſt Chapter of the firſt Book, for that he to whom the releaſe is, is ſeiſed per my, & per tout, of the fee and inheritance, as hath been ſaid in the Chapter of joyntenants. And note, the like Law is between Coparceners: and further if there be two Coparceners, and the one hath iſſue twenty daughters, and dieth, the other may releaſe to any one of the daughters her whole part, albeit ſhe to whom the releaſe is hath not an equal part, but for the gvidity, and the undivided eſtate, the releaſe is good.

But if two Joyntenants be of twenty Acres, and the one maketh a feoffment of his part in eighteen Acres, the other cannot releaſe his entire part, but only in two Acres, for that the Joynture is ſevered for the reſidue.

res per force de le dit releas, & il & ſon companion, teignet les auters deux parts en joynture. Et quant al tierce part, que il ad per force de releas, il tient cel tierce part ove luy mes ſon companion en common.

the Lands by force of the ſaid releaſe, and he and his companion ſhall hold the other 2 parts in joynture. And as to the third part which he hath by force of the releaſe, he holdeth that third part with himſelf and his companion in common.

Sect. 305.

¶ This is evident upon that which hath been ſaid before. (c) And it is to be underſtood that a Releaſe may enure four manner of wayes. *Firſt*, by way of mitter leſtate, as here it appeareth. *Secondly*, by way of mitter le droit. *Thirdly*, by way of Extinguiſhment. *Fourthly*, by way of creation or enlargement of an Eſtate, as hereafter in this chapter ſhall appear. And it is to be obſerved, that upon a Releaſe that creates or enlargeth an Eſtate, or enures by way of mitter leſtate, a Rent may be reſerved, but not upon a releaſe that enureth by way of mitter le droit or which enures by way of Extinguiſhment.

(c) 10 Eliz. Bendloes caſe. 9 Eliz. Dier 263.

See more of this in the Chapter of Releaſes.

19 E.3.4.b. 21 H.6.8.b.

The (&c.) in the end of this Section implieth a diverſity

¶ ET eſt aſcavoir, q̄ alcun foits un releas prendra effect, & urera pur mitter leſtate de celuy que fiſt le releas, a celuy a que le releas eſt fait, ſicome en le cas avantdit, & auxy ſicome joynt eſtate ſoit fait a le barō & ſa feme, & a la tierce perſon & la tierce perſon releſſa tout ſon droit que il ad a le baron, adonque ad le baron la moietie que le tierce avoit, & la feme de ceo nad riens. Et ſi en tiel caſe le tierce releſſa a la feme nient nolmant le baron en le releas, donques ad la feme le moietie que le tierce avoit, &c. & l'barō nad riens de ceo forſque

AND it is to be obſerved that ſometimes a deed of releaſe ſhall take effect and enure to put the eſtate of him which makes the releaſe to him to whom the releaſe is made, as in the caſe aforeſaid, and alſo as if a joynt eſtate be made to the husband and wife, and to a third perſon, and the third perſon releaſe all his right which he hath to the husband, then hath the husband the moiety which the third had, and the wife hath nothing of this. And if in ſuch caſe the third Releaſe to the wife not naming the husband in the releaſe, then hath the wife the moiety which the

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en droit ſa feme, pur ceo que en tiel caſe le releaſe urera de fait eſtate a celuy a que le releaſe eſt fait, de tout ceo que affiert a celuy que fait le releaſe, &c.

third had, &c. And the husband had nothing of this but in right of his Wife, becauſe that in this caſe the releaſe ſhall enure to make an eſtate to whom the releaſe is made of all that which belongeth to him which maketh the releaſe, &c.

between a releaſe which enures by way of mitter leſtate (whereof Littleton here ſpeaketh) and a releaſe that enures by way of Extinguiſhment: for a releaſe enuring by way of extinguiſhment made to the huſband, the wife ſhall take benefit; or to the wife, the husband ſhall take benefit, as hereafter ſhall more at large be ſaid.

Sect. 306.

¶ ET en aſcun cas un releas urera de mitter tout le droit q̄ il q̄ fait le releas ad a celuy a que le releaſe eſt fait: Sicome home ſeiſie de certeine tenements eſt diſſeiſie per deux diſſeiſors, ſi le Diſſeiſee p̄ ſon fait releſſa tout ſon droit, &c. a un des diſſeiſors, donque celuy a que releas eſt fait avera et tiendra touts les tenements a luy ſolement, et ouſtera ſon companion de chelcun occupation de ceo. Et le cauſe eſt, pur ceo q̄ les deux diſſeiſors fueront eins encounter la ley, et quant un de eux happe le releas de celuy que ad droit dentre, &c. ceſt droit en tiel cas veſtera en celuy a que le releas eſt fait, et eſt en tiel plyte, ſicome il q̄ aveit droit aveit enter, et luy enfeoffa

AND in ſome caſe a releaſe ſhall enure to put all the right which he who maketh the releaſe hath, to him to whom the releaſe is made. As if a man ſeiſed of certain Tenements is diſſeiſed by two diſſeiſors, if the Diſſeiſee by his deed releaſe all his right, &c. to one of the diſſeiſors, then he to whom the releaſe is made ſhall have and hold all the tenements to him alone, and ſhall ouſt his companion of every occupation of this. And the reaſon is, for that the two Diſſeiſors were in againſt the Law, and when one of them happeth the releaſe of him which hath right of entry, &c. this right in ſuch caſe ſhall veſt in him to whom the releaſe is made, and he is in like plite, as he which

¶ HERE Littleton purſueth the ſecond part of his diviſion, viz. where a releaſe ſhall enure by way of Mitter le droit.

¶ *Diſſeiſee per deux diſſeiſors, &c.* The like Law is where there be two joynt Abbots or Intruders which come in meerly by wrong. But if two men do uſurp by a wrongful preſentation to a Church, and their Clerk is admitted, inſtituted, and inducted, and the rightful Patron releaſeth to one of them, this ſhall enure to them both, for that the uſurpers come not in meerly by wrong, but their Clerk is in by admiſſion, and inſtitution, which are judicial acts. (f) And therefore an uſurpation ſhall work a Remitter to one that hath a former right.

(f) Fitz. N.B. 35. in 11 R. 2. 2. quare Imp. 144.

¶ *Donques celuy a que le releas eſt fait avera et teignera touts les tenements, &c.* Here by operation of Law preſently upon the delibery of the releaſe the whole Freehold and inheritance is veſted in him to whom the releaſe is made, and all the ſtate that the other Diſſeiſor had wholly veſted: for right and wrong cannot conſiſt together, but the wrongful eſtate giveth place to the rightful. And the reaſon hereof is, for that as hath been ſaid, the Diſſeiſor to whom the releaſe

was made was ſeiſed Per my & per tout, whereunto when the right cometh it excludeth the wrong: (e) for right which is lawful, and wrong that is contrary to Law cannot ſtand together.

(e) Brit. fol. 116. 26 Aſſ. pl. 39. 39 E. 3. 29. 21 H. 6. 41. 22 H. 6. 22. 7 E. 4. 25. 9 E. 4. 6. 11 H. 7. 12. 20 H. 7. 5. 21 H. 7. 18. 12 E. 4. tit. Diſcontin. 1. 9 H. 6. 37. 21 H. 6. 52.

¶ *En tiel plite ſicome il que avoit droit, avoit enter & luy enfeoffe, &c.*

&c. Et la cauſe eſt, pur ceo que il q̄ avoit advenant eſtate per tort, ſ. p diſſeiſin, &c. ad ore per le releas un eſtate droiturel.

hath the right had entred and infeoffed him, &c. And the reaſon is, for that he which before had an eſtate by wrong, s. by diſſeiſin, &c. hath now by the releaſe a rightful eſtate.

This (&c.) doth imply that this is true ſecundum quid, but not ſimpliciter; for as to the holding out of the joint diſſeiſor, it amounts to as much as if he had entred and infeoffed him to whom the releaſe is made, but it doth not amount to an entry and feoffment ſimpliciter to all purpoſes, as ſhall be ſaid hereafter in his proper place in the Chapter of Releaſes.

Sect. 307.

¶ HEre Littleton ſpeaketh of the third kind of releaſes. And the reaſon of this diverſity (implied in the (&c.) in the end of this Section) betwixt the diſſeiſors and their feoffees is, for that the Feoffees coming in by title and purchaſe, are intended in Law to have a Warranty (which is much eſteemed in Law) and therefore leſt the Warranty ſhould be avoided, the releaſe ſhall enure to both the feoffees in favour of Purchaſors, and ſo the right and benefit of every one ſaved. (f) And in ancient time if the Diſſeiſor had made a Feoffment in fee, or a gift in taile, or a leaſe for life, and the Feoffee, Donee, or Leſſee had continued in ſeiſin quietly a year and a day, the entry of the Diſſeiſee had not been lawfull upon him; and the reaſon was, for the benefit and ſafegard of the Warranty, (which was intended by Law) ſhould have been deſtroyed by the entry. But hereof alſo more ſhall be ſaid in his proper place in the Chapter of Releaſes.

(f) 20 H. 3. Aſſ. 432. 1 Aſſ. 15. 9 Aſſ. 15. 21 Aſſ. 28. 27 Aſſ. 68. 32. 29 Aſſ. 54. 43 Aſſ. 17. 40 E. 3. 24. 50 E. 3. 21. 3 R. 2. entre cong. 38. 13 E. 3. tit. Aſſ. 9. 12 Aſſ. 20.

¶ EN aſcun cas un releas urera per voy dextinguiſhment, & en tiel caſe tiel releas aydera la joyntenants a q̄ le releas ne fuit fait, auſſibien come luy a q̄ le releas fuit fait. Sicome un home ſoit diſſeiſe, & le diſſeiſor fait feoffment a deux homes en fee, ſi le diſſeiſee releſſa per ſon fait a un de les feoffees, donques cel releaſe urera a ambideux les feoffees pur ceo q̄ les feoffees ont eſtate per le ley, ſ. per feoffment, & nemy per tort fait a nulluy, &c.

AND in ſome caſe a releaſe ſhall enure by way of extinguiſhment, and in ſuch caſe ſuch releaſe ſhall aid the Joyntenant to whom the releaſe was not made, as well as him to whom the releaſe was made. As if a man be diſſeiſed, and the Diſſeiſor makes a feoffment to two men in fee if the diſſeiſee releaſe by his deed to one of the feoffees, this releaſe ſhall enure to both the feoffees, for that the feoffees have an eſtate by the Law, s. by feoffment, and not by wrong done to any, &c.

Sect. 308.

¶ EN meſme le maner eſt, ſi le diſſeiſor fait un leaſe a un home pur term̄ de ſa vie, le remain-

IN the ſame manner it is, if the Diſſeiſor maketh a releaſe to a man for term of his life, the re-

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der ouſter a un auter en fee, ſi le diſſeiſée releſſa a le tenant a term de vie tout ſon droit, &c. cel releaſe urera auxibien a celuy en le remainder come a le tenant a term de vie. Et la cauſe eſt, pur ceo que le tenant a terme de vie vient a ſon eſtate per courſe de ley, & pur ceo cel releaſe urera & prent effect pur voy dextinguiſhment de droit de celuy que releſſa, &c. Et per cel releaſe le tenant a terme de vie nad pluis ample ne greinder eſtate, que il avoit devant le releaſe fait a luy, & le droit celuy que releſſa eſt tout ouſterment extinct. Et entant que ceſt releaſe ne poit enlarge le ſtate de le Tenant a terme de vie, il eſt reaſon que cel releaſe urera a celuy en le remainder, &c.

¶ Pluis ſerra dit de Releaſes en le Chapiter de Releaſes.

mainder over to another in fee, if the diſſeiſee releaſe to the Tenant for term of life all his right, &c. this releaſe ſhall enure as well to him in the remainder, as to the tenant for term of life. And the reaſon is, for that the Tenant for life cometh to his eſtate by courſe of law, and therefore this releaſe ſhall enure and take effect by way of extinguiſhment of the right of him which releaſeth, &c. And by this releaſe the tenant for life hath no ampler nor greater eſtate then he had before the releaſe made him, and the right of him which releaſeth is altogether extinct. And inaſmuch as this releaſe cannot inlarge the eſtate of the tenant for life, it is reaſon that this releaſe ſhall enure to him in the remainder, &c.

More ſhall be ſaid of Releaſes in the Chapter of Releaſes

¶ *Cel releaſe urera auxibien a celuy en le remainder, come a le tenant a terme de vie, &c.* Of this and the reſt of this Section, for avoiding repetition, more ſhall be ſaid in his proper place in the Chapter of Releaſes.

¶ *Tout ſon droit, &c.* Here by this (&c.) is implied, title, demand, and other words which may transfer the right, &c. Alſo here is implied of, in, or to the land.

Sect. 309.

¶ Item ſi ſoient deux Parceners, & lun alien ceo que a luy aſſiert a un auter, donques lauter parcener & lalienée ſont Tenants en Common.

Alſo if two Parceners be, and the one alieneth that to her belongeth, to another, then the other Parcener and the Alienee are Tenants in Common.

This is evident and needeth no explication.

Sect. 310.

¶ Item nota que Tenants en common poient eſtre per title de Preſcription, ſicome lun & ſes Anceſtors, ou ceux que eſtate il

Alſo note that Tenants in Common may be by title of Preſcription, as if the one and his Anceſtors, or they whoſe eſtate

ad en un moiety ont tenus en common meſme le moiety, ove lauter tenant que ad lauter moiety & ove les Auncеſtors ou ove ceux que eſtate il ad Pro indiviſo, de temps dont memory ne curt, &c. Et divers auters manners poyent fait & cauſer homes deſtre Tenaunts en Common, que ne ſont icy expreſſes, &c.

he hath in one moiety, have holden in common the ſame moiety with the other tenant which hath the other moiety, and with his Anceſtors, or with thoſe whoſe ſtate he hath undivided, time out of mind of man. And divers other manners may make and cauſe men to be Tenants in common, which are not here expreſt, &c.

11 E. 3. Tranſ. 212. 13 E. 3. Briefe 674. 8 H. 6. 16. b. Lib. Intrat. 83.

¶ Of this, beſides Littleton, there is good authority in Law, as there is for all his other caſes throughout his three Books, but Joyntenants cannot be by preſcription, becauſe there is ſurvivor between them, but not between Tenant in Common.

The two (&c.) in this Section are evident.

Sect. 311.

¶ In this Section we learn two things: First, That in reall Actions, and in Actions alſo that are mixt with the perſonalty, tenants in common ſhall ſever in Action, becauſe they have ſeveral freeholds, and claim in by ſeveral titles, and therefore as they ſhall be ſeverally by others impleaded, ſo ſhall they ſeverally implead others in all real and mixt Actions, unleſſe it be in caſe of neceſſity for a thing entire, as hereafter in this Chapter ſhall appear. And Littleton here putteth the caſe of the Aſſiſe which is mixt with the perſonalty, and therefore he needeth not to put any caſe of any Præcipe quod reddat; for if it be ſo in caſe of Aſſiſe; a fortiori, in Writs of higher nature, which is neceſſarily implied in the (&c.) Now of ſuits that ſound in the realty, and of perſonal Actions, Littleton ſpeaketh hereafter in this Chapter. The ſecond thing here to be learned, is the diverſity between Tenants in Common, and Joyntenants, which both of it ſelf, and upon that which hath been ſaid, is apparent.

¶ Item en alcun cas Tenants en Common doyent aver de lour poſſeſſion ſeveralx Actions, & en alcun cas ils joyndront en un Action. Car ſi ſont deux Tenants en Common, & ils ſont diſſeiſies, ils doyent aver deux Aſſiſes, & nemy un Aſſiſe, car chaſcun de eux covient aver un Aſſiſe de ſon moiety, &c. Et la cauſe eſt, pur ceo que Tenants en common fueront ſeiſies, &c. per ſeveralx titles. Mes auterment eſt de Joyntenants, car ſi ſoyent dint Joyntenants, & ils ſont diſſeiſies, ils averont en touts lour noſmes forſque un Aſſiſe, pur ceo que ils nont forſque un joynt title.

4 E. 4. 18. b.

Alſo in ſome caſe tenants in Common ought to have of their poſſeſſion ſeveral actions, and in ſome caſes they ſhall joyn in one Action. For if two Tenants in Common be, and they be diſſeiſed, they muſt have two Aſſiſes, and not one Aſſiſe; for each of them ought to have one Aſſiſe of his moiety, &c. and the reaſon is, for that the Tenants in Common were ſeiſed, &c. by ſeverall Titles. But otherwiſe it is of Joyntenants, for if twenty Joyntenants be, and they be diſſeiſed, they ſhall have in all their names but one Aſſiſe, becauſe they have not but one joynt title.

Sect. 312.

¶ Item ſi ſoient trois Joyntenants, & un releaſe a un de ſes companions tout le droit que il ad, &c. & puis les auters deux ſont diſſeiſies de lentiertie, &c. en ceſt caſe les deux auters averont ſeveralx Aſſiſes, &c. en ceſt forme, ſ. ils averont en lour ambideux noſmes, un Aſſiſe de les deux parts, &c. pur ceo que les deux parts ils teignont jointment al temps de le diſſeiſin. Et quant a le tierce part, celuy a que le releaſe fuit fait, covient aver de ceo un Aſſiſe en ſon noſme demeſne, pur ceo que il (quaunt a meſme le tierce part) eſt de ceo Tenant en Common, &c. pur ceo que il vient a cel tierce part per force del Releaſe, & nemy tantſolement per force del joynture.

Alſo if three Joyntenants be, and one releaſe to one of his fellowes all the right which he hath, &c. and after the other two be diſſeiſed of the whole, &c. In this caſe the two others ſhall have ſeveral Aſſiſes, &c. in this manner, ſ. They ſhall have in both their names an Aſſiſe of the two parts, &c. becauſe the two parts they held joyntly at the time of the diſſeiſin. And as to the third part, he to whom the releaſe was made, ought to have of that an Aſſiſe in his own name, for that he (as to the ſame third part) is thereof Tenant in Common, &c. becauſe he cometh to his third part by force of the Releaſe, and not onely by force of the Joynture.

¶ This is put for an example (which ever doth illuſtrate the Rule) and is evident of it ſelf: and the (&c.) in this Section needeth no further explication.

Sect. 313.

¶ Item quant a ſuer des Actions que touchant le realtie, y ſont diverſities perenter parceners que ſont eins per divers diſcents, & Tenaunts en common. Car ſi home ſeiſie de certaine terre en fee ad iſſue deux files & mouſt, & les files entront, &c. & cheſcun de eux ad iſſue un fits, & devieront ſauns partition fait enter eux, pur que lun moiety diſcendiſt a le fits dun Parcener, & le auter moiety diſcendiſt al fits dauter parcener, & ils entront

Alſo to the ſuing of Actions which touch the realty, there be diverſities between Parceners which are in by divers deſcents, and Tenants in Common: For if a man ſeiſed of certain land in Fee, hath iſſue two Daughters and dieth, and the Daughters enter, &c. and each of them hath iſſue a Son, and die without partition made between them, by which the one moiety deſcends to the Son of the one Parcener, & the other moiety deſcends to the

entront & occupiont en common & ſont diſſeiſies, en ceſt caſe ils averont en lour deux noſmes un Aſſiſe & nemy deux Aſſiſes. Et la cauſe eſt, que coment que ils veignont eins per divers diſcents, &c. uncore ils ſont Parceners & briefe de Partione facienda giſt enter eux. Et ils ne ſont parceners eyant regarde ou reſpect tantſolement a le ſeiſin & poſſeſſion de lour meres, mes ils ſont Parceners pluis eyant reſpect a leſtate que diſcendiſt de lour ayel a lour meres, car ils ne poyent eſtre Parceners ſi lour meres ne fueront Parceners a devant, &c. Et iſſint a tiel reſpect & conſideration S. quant a le primer diſcent que fuit a lour meres ils ont un title en parcenarie, le quel fait eux parceners. Et auxy ils ne ſont forſque come un heire a lour common Auncеſtors, S. a lour ayel de que la terre diſcendiſt a lour meres. Et pur ceux cauſes, devant partition enter eux, &c. ils averont un Aſſiſe, coment que ils veignont eins p ſeveralx diſcents.

Son of the other Parcener, & they enter and occupie in common and be diſſeiſed, in this caſe they ſhall have in their two names one Aſſiſe, & not two Aſſiſes. And the cauſe is, for that albeit they come in by divers deſcents, &c. yet they are Parceners, and a Writ of Partition lieth between them. And they are not Parceners, having regard or reſpect only to the Seiſin and poſſeſſion of their mothers, but they are Parceners rather, having reſpect to the eſtate which deſcended from their Grandfather to their mothers, for they cannot be Parceners if their mothers were not Parceners before, &c. And ſo in this reſpect and conſideration, s. as to the firſt deſcent, which was to their mothers, they have a title in Parcenary, the which makes them Parceners. And alſo they are but as one heir to their common Anceſtors, s. to their grandfather, from whom the land deſcended to their mothers. And for theſe cauſes, before partition between them, &c. they ſhall have an Aſſiſe, although they come in by ſeveral deſcents.

Vide Sect. 241.

¶ THis, upon that which hath been ſaid in the * Chapter of Parceners, is evident: where you may read excellent points of learning, and diverſities concerning this matter, all which are here either expreſſed or implied, as the ſtudious and diligent Reader will obſerve.

Sect. 314.

¶ *EN ceſt caſe quant a le rent & liver de Pepper, ils averont deux Aſſiſes & quant a leſperuer ou le Chival forſque un Aſſiſe.*

But for the better underſtanding hereof it is to be known, That if two Te-

¶ Item ſi ſont deux Tenants en Common de certain Terre en fee, & ils doneront cel terre a un home en le tail, ou leſſeront a un home pur term

ALſo if there be two Tenants in Common of certain Land in Fee, and they give this Land to a man in Tail, or let it to one for term of life, ren-

de

de vie, rendant a eux annuelment un certeine rent, & un liver de Pepper, & un eſperuer, ou un chival, & ils ſont ſeiſies de ceſt ſerbice, & puis tout le rent eſt aderere, & ils diſtreigneront pur ceo, & le tenant a eux fait reſcous. En ceſt cas quant a le rent & liver de Pepper ils averont deux Aſſiſes, & quant a leſperuer, ou le chival ſoeſp un Aſſiſe. Et la cauſe pur que ils averont deux Aſſiſes, quant a le rent & liver de Pepper, eſt ceo, entant que ils fueront tenants en common en ſeverall titles, & quant ils fieront un done en le taile ou leas pur term de vie, ſavant a eux le reverſion, & rendant a eux certeine rent, &c. tiel reſervation eſt incident a lour reverſion, & pur ceo que lour reverſion eſt en common, & per ſeverall titles, ſicome lour poſſeſſion fuit devant le rent, & auters choſes que poient eſtre ſeveres, & fueront a eux reſerves ſur le done, ou ſur le leas, queux ſont incidents per le ley a lour reverſion, tiels choſes iſſint reſerves fueront de la nature del reverſion. Et entant que l' reverſion eſt a eux dring to them yearly a certain rent, and a pound of Pepper, and a Hawke, or a Horſe, and they be ſeiſed of his ſervice, and afterwards the whole Rent is behind, and they diſtrain for this, and the Tenant maketh Reſcous. In this caſe, as to the Rent and pound of Pepper, they ſhall have two Aſſiſes, and as to the Hawke or the Horſe, but one Aſſiſe. And the reaſon why then they ſhall have two Aſſiſes as to the Rent and pound of Pepper, is this, inſomuch as they were Tenants in Common in ſeveral titles, and when they make a gift in taile or leaſe for life, ſaving to them the Reverſion, and rendring to them a certain rent, &c. ſuch reſervation is incident to their reverſion, and for that their reverſion is in common and by ſeveral titles as their poſſeſſion was before the rent, and other things which may be ſevered, and were reſerved unto them upon the gift or upon the leaſe which are incidents by the Law to their reverſion, ſuch things ſo reſerved were of the nature of the reverſion. And in as much as the reverſion is to them in common by ſeveral titles, it behonants in Common be, and they grant a rent of twenty ſhillings per annum out of their Land, the Grantee ſhall have two rents of twenty ſhillings, for that every mans grant ſhall be taken moſt ſtrongly againſt himſelf, and therefore they be ſeveral grants in Law. Pl. Com. Hill & Granges caſe 171. Vide Sect. 219.

But if they two make a gift in taile, a leaſe for life, &c. reſerving twenty ſhillings rent to them and their heirs, they ſhall have but one 20. ſhillings, for they ſhall have no more then themſelves reſerved: and the Donee or Leſſee ſhall pay but twenty ſhillings according to their own expreſſe reſervation: And albeit the reſervation of Rent ſeverable be in joynt words, yet in reſpect of the ſeveral reverſions the Law makes thereof a ſeverance. Now for the rent, as namely twenty ſhillings or a pound of Pepper may be ſevered. the one Tenant in Common may have an aſſiſe for the moiety of twenty ſhillings, & the moiety of a pound of Pepper, de medietate unius libræ piperis, but he cannot have an aſſiſe of ten ſhillings, or de dimidio libræ piperis. But for the Hawke or Horſe, albeit they be Tenants in Common, they ſhall joyn in an Aſſiſe, for otherwiſe they ſhould be without remedy, for one of them cannot make his plaint in Aſſiſe of the moiety of a hawke, or of a horſe, for the Law will never ſuffer any man to demand any thing againſt the order of nature Vide 16 Aſſ. pl. 1. 16 E. 3. Joyndre en action 27.

Regula. Vide Sect. 129.

ture or reason, as before it appeareth by Littleton, Section 129. Lex enim spectat naturæ ordinem. Also the Law will never enforce a man to demand that which he cannot recover, and a man cannot recover (i) the moiety of a Hawke, Horse, or of any other entire thing: Lex neminem cogit ad vana, seu inutilia.

(i) Lib. 5. fol. 21.

Regula.

But in that case they shall joyn in an assise; and the reason is, Ne Curia Domini Regis deficeret in justitia exhibenda, or lex non debet deficere consequentibus in justitia exhibenda.

Regula.

And if they should not joyn, they should have damnum & injuriam, and yet should have no remedy (*) by Law, which should be inconvenient: but the Law will, that in every case where a man is wronged and endamaged, that he shall have a remedy. Aliquid conceditur, ne injuria remaneret impunita, quod alias non concederetur.

(*) 3 E. 3. 19. 2.

38 E. 3. 35. Regula.

en common per severall titles, il covient que le rent, et le liver de Pepper, queux poyent estre severs, soyent a eux en common, et per severall titles, et de ceo ils averont deux Assises, et chescun de eux en son Assize serra son pleynt de le moiety del le rent, & le moiety del liver de Pepper, mes de lesperver, ou de chival que ne poyent estre severs, ils averont forsque un Assise, car home ne poit faire un pleint en Assise de le moiety dun esperver, ne de le moiety dun chival, &c. En mesme maner est dauter rents et dauters serbices que Tenants en Common ount en grosse per divers titles, &c.

veth that the rent and the pound of Pepper which may be severed, be to them in common and by several titles. And of this they shall have two Assises, and each of them in his Assise shall make his plaint of the moiety of the Rent, and of the moiety of the pound of Pepper. But of the Hawke or of the Horse which cannot be severed, they shall have but one Assise; for a man cannot make a plaint in an Assise of the moiety of a Hawk, nor of the moiety of a Horse, &c. In the same manner it is of other Rents and of other Services which Tenants in Common have in grosse by divers titles, &c.

(m) And Tenants in Common shall joyn in a quare impedit, because the presentation to the Advowson is entire.

(m) 5 H. 7. 8 13 E. 2. quar. imp. 170. 32 H. 6. 11. 6 E. 4. 10. 15 E. 3. Darr. presentment 10.

(n) Also Tenants in Common of a Seigniory shall joyn in a Writ of right of ward, and Ravishment of ward for the body, because it is entire.

(n) 6 H. 4. 6. 7. 45 E. 3. 10. 30 H. 6 Ass. 39. 18 E. 3. 56.

If two Tenants in Common be of the wardship of the body, and one doth ravish the Ward, and the one Tenant in Common releases to the ravisher, this shall go in benefit of the other Tenant in Common, and he shall recover the whole, and this release shall not be any bar to him. And so it is if two Tenants in Common be of an Advowson, and they bring a Quare impedit, and the one doth release, yet the other shall sue forth, and recover the whole presentment.

Two Tenants in Common shall not joyn in a detinue of Charters; and if the one be Nonsuit, the other shall recover.

18 E. 3. 56.

It is said that Tenants in Common shall joyn in a Warrantia Chartæ, but sever in Mouther.

¶ *Moietie de chival, &c.* Here is implyed, or any other entire rent or service.

¶ *Per divers titles, &c.* That is, by several titles, and not by one joynt title, as hath been said.

Sect. 315.

39 E. 3. 51. 43 E. 3. 24. 46 E. 3. 27. 5 H. 4. 3. 14 H. 4. 31. 3 H. 6. 57. 12 H. 6. 22. 22 H. 6. 14. 18 E. 4. 30. 2 R. 3. 16. 10 H. 7. 27. 21 H. 7. 22. 37 H. 6. 35. 21 E. 4. 12.

¶ *Averont tiels actions personels joyntment en touts lour noſmes, &c.* By this

¶ Item quant al actions personels tenants en common averont tiels actions

Also as to Actions personals, Tenants in common may have such Actions per-

per-

ſonals joyntment e touts lour noims, ſicome de treſpas, ou de offence que touche lour tenements en common, ſicome de vaſter lour meaſons, ô enfriender de lour cloſes, de paſture, degaſter e defouler des herbs, e ô couper lour bois, ô piſcher e lour piſcary, & hujuſmodi. Et en ceſt cas tenãts en common averont un action jointment, e recoveront joyntment lour damages, pur ceo que laction eſt en le perſonalitie, e nemy en le realtie, &c.

ſonals joyntly in all their names as of treſpaſſe, or of offences which concerne their Tenements in Common; as for breaking their houſes, breaking their Cloſes, feeding, waſting, and defouling the graſs, cutting their woods, for fiſhing in their Piſcary, and ſuch like. In this caſe Tenants in Common ſhall have an Action joyntly, and ſhall recover joyntly their damages, becauſe the Action is in the perſonalty, and not in the realty, &c.

it appeareth that Tenants in common ſhall have perſonal Actions joyntly. And it is to be obſerved, that where damages are to be recovered for a wrong done to Tenants in Common, or parceners on a perſonall Action, and one of them dye, the ſurvivor of them ſhall have the action; for albeit the property or eſtate be ſeveral between them, yet (as it appeareth by Littleton) the perſonal action is joynt. Vide Sect.319,320,321.

¶ *Et hujuſmodi.*

Hereby is implied a diverſity betweena Chattel in poſſeſſion, and a perſonal Choſe in action belonging unto them. As if two Tenants in Common be of land, and one doth a treſpaſs therein, of this action they are joyntenants, and the ſurvivor ſhall hold place. So it is if two tenants in Common be of a Mannor, and they make a Bayliff thereof, and one of them dyeth, the ſurvivor ſhall have the Action of Account, for the Action given unto them for the arrerages upon the Account was joynt. So it is if two tenants in Common ſow their land, and one doth eat the ſame with his cattel, though they have the Corn in Common, yet the action given to them for treſpaſs in the ſame is joynt, and ſhall ſurvive. For the treſpaſs and damage done to them was joynt; all which here is implied by Littleton, who ſaith, that they ſhall have an Action joyntly, and the ſame Law is of Coparceners. 22 H.6.12. 38 E.3.7. 13 E.3. Account 126. 45 E.3.13,14. 37 H.6.32,38.

But if two Tenants in Common be of goods, as of an horſe, or of any other goods perſonal, then if one dye, his Executors ſhall be Tenant in Common with the ſurvivor.

¶ *Et nemy en la realtie, &c.* If two tenants in Common be of an Advowſon, and a ſtranger uſurp, ſo as the right is turned to an action, and they bring a writ of Quare impedit which concerns the realty, the ſix moneths paſs, and the one dieth, the Writ ſhall not abate, but the ſurvivor ſhall recover, otherwiſe there ſhould be no remedy to redreſs this wrong. And ſo it is of Coparceners, and this is one exception out of our Authors rule. 38 E.3.5. 17 E.3.11. 3 H.5. Quare Imp. 71. 14 H.4.12. 9 H.6.30. 22 H.4.14. 37 H.6.9.b. 10 El. Dier 279. F.N.B. 35. 9 E.3.36,37. Pl.Com. Seig. Barkleys caſe.

(*) But if three Coparceners recover land and damages in an Aſſiſe Mordancеſtor, albeit the judgment be joynt that they ſhall recover the land and damages, yet the damages being acceſſory, though they be perſonal, do in judgement of Law depend upon the Freehold, being the principal which is ſeveral. And though the words of the judgment be joynt, yet ſhall it be taken for diſtributive. And therefore if two of them dye, the intire damages do not ſurvive, but the third ſhall have execution according to her portion; and this is another exception out of our Authors rule. But if all three had ſued execution by force of an Elegit, and two of them had dyed, the third ſhould have had the whole by ſurvivor, till the whole damages be paid. (*) 14 E.3. Execution 75. 45 E.3.3.b. 45 E.3.3.b. 4 E.3.14. 11 H.4.16.b. 35 H.6.23.b.

If the Aunt and Niece joyn in action of waſte, for waſt done in the life of the other ſiſter, the Aunt ſhall recover the damages onely, becauſe the ſame belongs not by Law to the Niece. And ſome hold the damages in that caſe to be the principal. 11 E.2. Waſt. 115.

Sect. 316.

¶ Item ſi deux tenants en common font un leaſe ô

Alſo if two Tenants in Common make a leaſe of their Tenlour

lour tenements a un auter p̄ term̄ des ans, rendant a eux certaine rent annualment durant l' terme, si le rent soit aderere, &c. les tenants en comon averont un action de debt envers le lessé, & nemy divers actions, pur ceo que laction est en la personalty.

nements to another for terme of years, rendring to them certain Rent yearly during the terme if the rent be behind, &c. the Tenants in Common shall have an action of debt against the lessee, and not diverse actions, for that the action is in the personalty.

This upon that which hath been said is evident.

Sect. 317.

¶ MEs en avowry pur l' dit rent ils covient sever, Car ceo est en le realty come le assise est supra.

BUt in an Avowry for the said rent they ought to sever: for this is in the realty, as the Assise is above.

Vide 9 E.3.36,37. Pl.Com. Seignior Barkleys case

This being an addition to Littleton, albeit it be consonant to Law, yet I omitit

*Sect.*318.

¶ ITem tenants en common poyent bien faire partition enter eux sils voilent, coment quod ils ne serront compelles de fair partition per la ley, mes sils font enter eux partition per lour agrément & consent, tiel partition est assets bone, come est adjudge en liber dassises.

ALso tenants in common may well make partition between them if they will, but they shall not be compelled to make partition by the Law; but if they make partition between themselves by their agreement and consent, such partition is good enough, as is adjudged in the book of Assises.

Of this sufficient hath been said in the chapter of Parceners and Joyntenants.

Vid. Sect. 259,290 247.264. 19 Ass.p.1. 30 Ass.p.8. 47 E.3.22.

¶ *En le liver dassises.* This book is of great authority in law, and is so called because it principally containeth the proceedings upon Writs of Assise of Novel disseisin, which in those dayes was Festinum & frequens remedium.

*Sect.*319.

¶ ITem sicome y sont tenants en common de terres & tenements, &c. sicome est avantdit: En meisme le maner y sont de chattels reals & personals, Sicome lease soit fait de certain terres a deux homes pur terme de 20. ans, & quant ils sont de

ALso as there be Tenants in Common of Lands and Tenements, &c. as aforesaid; in the same manner there be of chattels reals and personals: As if a Lease be made of certain Lands to two men for terme of 20 years, and when they be of this possessed, the

ceo

ceo poſſeſſes un de les leſſées grãt ceo q̃ a luy affiert durant le terme a un auter donque meſme celuy a que l'grant eſt fait, et lauter tiendront et occupieront en common.

one of the Leſſees grant that which to him belongeth to another during the terme, then he to whom the grant is made, and the other ſhall hold and occupie in Common.

¶ *Grant ceo que a luy affiert.* The ſame Law it is, if the one Leſſee in this caſe make a Leaſe of part of the terme, the ſecond Leſſee and the other are Tenants in Common, as hath been ſaid in the Chapter of Joyntenants. The (&c.) in the Section implieth other hereditaments whereof men may be Tenants in Common, whereof ſufficient hath been ſaid before. Vid. Sect. 315.

Sect. 320.

¶ Item ſi deux ont joyntment le garde de corps et de ẽre dun enfãt deins age, et lun deux grãta a un auter ceo que a luy affiert de ẽm le garde, donque le grantée et lauter q̃ ne granta pas averont et tiendront ceo en common, &c.

ALſo if two have joyntly the wardſhip of the body & land of an infant within age, and the one of them grant to another that which to himſelf belongeth of the ſame ward, then the grantee, and the other which did not grant ſhall have and hold this in common, &c.

¶ Hereby it appeareth that there may be Tenants in Common as well of Chattels real entire, as wardſhip of the body, &c, as of chattels perſonal, as a Hawke or a Horſe. If two Tenants in Common be of a Seigniory, and a ward fall, they are Tenants in Common of the wardſhip as well of the body as land. And ſo it is if the land it ſelf eſcheat to them, they ſhall be Tenants in common thereof, and ſo it is of Parceners. 16 E. 3. tit. Ayd.

¶ *En common &c.* Here (&c.) implyeth any other entire chattel. Vid. devant. Sect. 315.

Sect. 321.

¶ EN meſme le maner eſt de chateux perſonals: Sicome deux ont joyntment per done ou per achate un chival ou boefe, &c. et lun grant ceo que a luy affiert de meſm le chival ou boefe a un auter: Donques le grãtée, et lauter que ne granta pas, averont et poſſideront tiels chateux perſonals en common. Et en tiels cales, ou divers perſons ont chateux reals ou perſonals en common & per divers titles, ſi lun de eux morust les auters que ſurveſquont, navera ceo per le ſur-

IN the ſame manner it is of chattels perſonals. As if two have joyntly by gift, or by buying a horſe or an oxe, &c. and the one grant that to him belongs of the ſame horſe or oxe to another, the Grantee and the other which did not grant ſhall have and poſſeſs ſuch chattels perſonals in Common: And in ſuch caſes where divers perſons have chattels real or perſonal in Common, and by divers titles, if the one of them dieth, the others which ſurvive ſhall not have this as Survivor, but the exe-

bibor, mes les executors celuy q̄ morust tiendrōt e occupier t̄ ovesqz eux q̄ survesquōt, sicōe lour testator fist ou deboit en sa vie, &c. pur ceo q̄ lour titles e droits ē t̄ fuerōt severals, &c.

cutors of him which dieth shall hold and occupie this with them which survive, as their testator did or ought to have done in his life time, &c. because that their titles and rights in this were several,&c.

Vid. devant. Sect. 313.

This is evident enough, and thereof sufficient hath been said.

Sect. 322.

¶ *Pur terme de ans, &c.* For on year, halfa year, &c.

¶ *Lun occupie tout & mist lauter hors de possession.* These are words materially added, for albeit one Tenant in Common take the whole profits, the other have no remedy by Law against him, for the taking of the whole profits is no ejectment: But if he drive out of the land any of the Cattel of the other Tenant in Common, or not suffer him to enter or occupie the Land, this as an ejectment or expulsion, whereupon he may have an Ejectione firmæ for the one moiety, and recover damages for the entry, but not for the mean profits.

¶ Ejectione firmæ *de la moiety, &c.* Here by this and the other (&c.) in these two Sections, are to be understood divers diversities between Actions which concern right and interest, (as of Ejectione firmæ, Ejectment de guard. quare ejecit infra terminum of a Chattel real upon an expulsion or ejectment) and Actions concerning the bare taking of the profits rising of the Land, or doing of Trespass upon the Land, as here by the examples do appear; for the right is several, and the taking of the profits in Common. The second diversity is between

21 E.4.11.22. 43 E.3.24. 45 E.3.13. 22 H.6 30.58. 8 H.6.17. 19 H.6.57. 32 H.6.16. 2 E.4.23.14 E.4.8. 18 E.4.30. 37 H.6.33. 21 E.3.29. 12 Ass.28. 47 E.3.22.b. 10 H.7.16. F.N.B.117.a. 17 E.2.Account. 122.

¶ Item en le case avant d̄, sicōe deux ont estat en common pur term̄ dās, &c. lun occupier tout, et mist lauter hors de possession e occupation, &c. dōq̄s celuy, q̄ est mise hors de occupation avera envers lauter brief de eject. firmæ, de la moiety, &c.

ALso in the case aforesaid, as if two have an estate in Common for term of years, &c. the one occupie all and put the other out of possession and occupation, he which is put out of occupation shall have against the other a writ of *Ejectione firmæ*, of the moiety,&c.

Sect. 323.

¶ En m̄ le maner est lou deux teignont le gard des terres ou tenements durant le nonage dū enfant, si lun ousta lauter de son possession, il que est ouste avera briefe de Ejectment de gard de le moiety, &c. pur ceo q̄ ceux choses son chateux realx, et poyent estre apportions et severs, &c. Mes nul Action de Trespas, testalcavoir, Quare clausum suum fregit, & herbam suam, &c.

IN the same manner it is where two hold the wardship of lands or tenements during the nonage of an Infant, if the one oust the other of his possession, he which is ousted shall have a Writ of *Ejectment de gard* of the moiety, &c. because that these things are chattels reals, and may be apportioned and severed, &c. but no Action of Trespass (*videlicet*) *Quare clausum suum fregit, & herbam suam &c. conculcavit, &* con-

con-

conculcavit & consumpsit, &c. & hujusmodi actiones, &c. lun ne poit aver envers lauter pur ceo q̄ chescun de eux poit entrer et occupier en common, &c. per my & per tout, les Terres et tenements queux ils teignont en common. Mes ſi deux ſont poſſeſſes de chattels perſonalx en common per divers titles, ſicome dun chival, ou Beof, ou Vache, &c. ſi lun prent ceo tout a luy hors d̄ poſſeſſion dauter, lauter nad nul auk remedie mes de prender ceo de luy q̄ ad fait luy le tort, pur occupier en common, &c. quant il poit veir ſon temps, &c. En meſm le manner eſt de chattels realx, que ne poyent eſtre ſevers, ſicome en le caſe abantdit, que deux ſont poſſeſſe dun gard d̄ corps dun enfant deins age, ſi lun prent lenfant hors de poſſeſſion dauter, lauter nad aſcun remedie p̄ aſcun action per la ley, mes de prend̄ lenfant hors de le poſſeſſion dauk quaunt il veir ſon temps.

ſumpſit, &c. & hujuſmodi actiones, &c. for one cannot have againſt the other; for that each of them may enter and occupy in common, &c. *per my & per tout*, the Lands and Tenements which they hold in common. But if two be poſſeſſed of Chattels perſonals in common by divers titles, as of an Horſe, an Ox, or a Cow, &c. if the one take the whole to himſelf out of the poſſeſſion of the other, the other hath no other remedy but to take this from him who hath done to him the wrong, to occupy in common, &c. when he can ſee his time, &c. In the ſame manner it is of Chattels reals, which cannot be ſevered, as in the caſe aforeſaid, where two be poſſeſſed of the wardſhip of the body of an Infant within age, if the one taketh the Infant out of the poſſeſſion of the other, the other hath no remedy by an action by the Law, but to take the Infant out of the poſſeſſion of the other when he ſees his time.

Chattels reals that are apportionable or ſeverable, as Leaſes for years, wardſhip of lands, intereſt of tenements by Elegit, Statute merchant, Staple, &c. of lands and tenements, and Chattels reals entire, as wardſhip of the body, a Villain for years, &c. for if one Tenant in common take away the Ward or the Villain, &c. the other hath no remedy by action, but he may take them again. Another diverſity is between Chattels reals and Chattels perſonals; for if one Tenant in Common take all the Chattels perſonals, the other hath no remedy by action, but he may take them again: and herein the like Law is concerning Chattels reals entire, and Chattels perſonal for this purpoſe. But of Chattels entire, as of a Sheep, horſe, or any other entire Chattel, real or perſonal, no ſurbiver ſhall be between them that hold them in Common: And Tenants in Common ſhall not joyn in an Ejectione firmæ, nor in a Writ of Ejectione de guard, or a Quare ejecit infra terminum, &c. for that theſe Actions concern the right of Lands which are ſeveral. 10 H. 4. Treſpaſs 178. 11 H. 4. 3. 21 E. 4. 11. 12.

If two Tenants in Common be of a Mannor, to the which waik and ſtray doth belong, a ſtray doth happen, they are Tenants in Common of the ſame, and if the one doth take the ſtray, the other hath no remedy by action, but to take him again. But if by preſcription the one is to have the firſt beaſt happening as a ſtray, and the other the ſecond, there an action lieth if the one takes that which pertains to the other. 13 E. 3. Briefe 694.

If two Tenants in Common be of a Dove-houſe, and the one deſtroy the old Doves whereby the flight is wholly loſt, the other Tenant in Common ſhall have an action of Treſpaſs, Quare vi & armis columbare le pl^s fregit, & ducentas columbas pretii 40 *s.* interfecit, per quod volatum columbaris ſui totaliter amiſit: For the whole flight is deſtroyed, and therefore he cannot in bar plead 47 E. 4. 22. b.

Tenancy in Common. And ſo it is if two Tenants in Common be of a Park, and one deſtroyeth all the Deer, an Action of Treſpaſs lieth.

4 E.2. Treſpaſs 233.
(c) 2 H.5.1. 2 H.5.3.

(c) If two Tenants in Common be of Land and of Mere ſtones, pro metis & bundis, and the one take them up and carry them away, the other ſhall have an action of Treſpaſs, Quare vi & armis againſt him, in like manner as he ſhall have for deſtruction of Doves.

(d) 13 E.3. Treſpaſs 212. 19 R.2. Br.927. 11 E.3. Treſpaſs 212. Vi. 18 H. 6. 5.

(d) If two Tenants in Common be of a Folding, and the one of them diſturb the other to erect hurdles, he ſhall have an action of Treſpaſs Quare vi & armis, for this diſturbance.

(e) 13 H. 7. 26.

(e) If two ſeveral owners of houſes have a River in Common between them, if one of them corrupt the River, the other ſhall have an action upon his Caſe.

(f) F.N.B.127. Reg.163.

(f) If two Tenants in Common, or Joyntenants be of an houſe or mill, and it fall in decay, and the one is willing to repair the ſame, and the other will not, he that is willing ſhall have a Writ de reparatione facienda, and the Writ ſaith, Ad reparationem & ſuſtentationem ejuſdem domus tenentur, whereby it appeareth that owners are in that caſe bound pro bono publico to maintain houſes and mills which are for habitation and uſe of men.

17 E.2. tit. Account 22. 8 E.2. Account 115. 30 E.1. Account 127. 45 E.3.10. 47 E.3.22. b. 38 E.3.9. 22 E.3.60. 3 E.3.27. 39 E.27.82. F. N.B.118.i. 10 H.7.16. 2 E. 4.25.

If one Joyntenant or Tenant in Common of Land maketh his companion his Bayliff of his part, he ſhall have an Action of Account againſt him, as hath been ſaid. But although one Tenant in Common, or Joyntenant, without being made Bayliff take the whole profits, no action of Account lieth againſt him; for an Action of Account he muſt charge him either as a Guardian, Bayliff, or Receiver, as hath been ſaid before, which he cannot do in this caſe, unleſs his companion conſtitute him his Bayliff. And therefore all thoſe Books which affirm that an Action of Account lieth by one Tenant in Common or Joyntenant againſt another, muſt be intended when the one makes the other his Bayliff: for otherwiſe, never his Bayliff to render an account is a good plea.

W. 2. cap. 23.

If there be two Tenants in Common of a Wood, Turbary, Piſcary, or the like, and one of them doth waſte againſt the will of his companion, his companion ſhall have an Action of Waſte, and he that did the waſte before judgment, hath election either to make his part in certainty by the Sheriff and the oath of men, &c. or that he grant, That from thenceforth he ſhall not do waſte but according to his portion, &c. and if he make choyce of a certain place, then the place waſted ſhall be aſſigned to him. (g) But this extends not to Coparceners, becauſe they were compelled to make a partition by the Common Law: and this, as it is ſaid, doth extend as well to Tenants in Common, and Joyntenants for life as to an eſtate of Inheritance. But if one Tenant in Common, or Joyntenant of a Dovehouſe deſtroy the whole flight of Doves, no action of Waſte doth lie in that caſe upon the ſaid Statute, (h) as ſome do hold.

(g) 27 H.8.13. 11 E.3. 29. 29 E.3.39. 3 E.2. Waſt.35. F.N.B. 59 d. F. N.B. 49. i.

(h) 47 E.3.22. 50 E.3.3. 10 E.4.3.b. 12 H.6.4.2. 21 E.3.47. 17 E.3.47. 18 E.4.27. 28.E.3.4.

If lands be given to two, and the heirs of one of them, and the Tenant for life doth waſte, he that hath the Inheritance ſhall have no action of waſte by the Statute of Glouceſter, but upon the Statute of W.2. he ſhall have an Action of Waſte. And it is to be known, that one Tenant in Common may infeoff his companion, but not releaſe, becauſe the Freehold is ſeveral. Joyntenants may releaſe, but not infeoff, becauſe the Freehold is joynt; but Coparceners may both infeoff and releaſe, becauſe their ſeiſin to ſome intents is joynt, and to ſome ſeveral.

Sect. 324.

¶ Item quant un home voile mẽer un feoffment fait a luy ou un done en le taile, ou un leaſe p̄ terme de vie dalcun t̄res ou tenemẽts, la il dirra p̄ force de quel feoffment, done, ou leas il fuit ſeiſie, &c. mes lou un voil plead un leas ou grant fait a luy ô chattel real ou perſonal, la il dirra, per force de quel il fuit poſſeſſe, &c.

¶ Pluis ſerra dit de tenants en common en le chapter de Releaſes, et tenant per Elegit.

ALſo when a man will ſhew a Feoffment made to him, or a gift in tail, or a leaſe for life, of any lands or tenements, there he ſhall ſay, by force of which feoffment, gift or leaſe, he was ſeiſed, &c. but where one will plead a leaſe or grant made to him of a chattel real or perſonal, then he ſhall ſay, by force of which he was poſſeſſed, &c.

More ſhall be ſaid of Tenants in Common in the Chapters of Releaſes and Tenant by *Elegit*.

¶ IL *fuit ſeiſie, &c.* Seiſie is a word of Art, and in pleading is only applyed to a Freehold at leaſt, as Poſſeſſe for diſtinction ſake is to a Chattel real or perſonal.

As

Soit B. plead a feoffment in fee, he concludeth, Virtute cujus prædict' B. fuit ſeiſitus, &c. But if he plead a leaſe for years, he pleadeth, Virtute cujus prædictus B. intravit & fuit inde poſſeſſionatus, and ſo of Chattels perſonal, Virtute cujus fuit inde poſſeſſionatus.

And this holdeth not onely in caſe of Lands or Tenements which lie in livery, but alſo of Rents, Advowſons, Commons, &c. and other things that lie in grant, whereof a man hath an eſtate for life or inheritance.

Alſo when a man pleads a leaſe for life, or any higher eſtate which paſſeth by Livery, he is not to plead any entry, for he is in actual ſeiſin by the livery it ſelf. Otherwiſe it is of a leaſe for years, becauſe there he is not actually poſſeſſed until an entry.

CHAP. 5. *Of Eſtates upon Condition.* *Sect.* 325.

¶ Eſtates que homes ount en terres ou tenements ſur condition ſont de deux maners, ſcilicet, ou ils ont eſtate ſur condition en fait ou ſur condition en ley, &c. Sur condition en fait eſt, ſicome un home per fait endent enfeoffa un auter en fee ſimple, reſerbant a luy & a ſes heires annualment certaine rent payable a un feaſt, ou a diders feaſts per an, ſur condition que ſi le rent ſoit aderere, &c. que bien liſt al feoffor & a ſes heires en meſmes les terres ou tenements de enter, &c. ou ſi terr ſoit alien a un home en fee rendant a luy certaine rent, &c. & ſil happa que le rent ſoit aderere per un ſemaigne apres alcun jour de payment de ceo, ou

EStates which men have in Lands or Tenements upon Condition, are of two ſorts, *viz.* either they have eſtate upon Condition in Deed, or upon Condition in Law, &c. upon Condition in Deed is, as if a man by Deed indented, enfeoffs another in fee ſimple, reſerving to him and his heirs yearly a certain rent payable at one feaſt or divers Feaſts *per annum*, on Condition that if the rent be behind, &c. that it ſhall be lawful for the Feoffor and his heirs into the ſame Lands or Tenements to enter, &c. And if it happen the Rent to be behind by a week after any day of payment of it, or by a moneth after any day of payment of it, or by half a year, &c. that then it ſhall be lawfull to the Feof-

¶ *Sur Condition.* Littleton having before ſpoken of Eſtates abſolute, now beginneth to entreat of Eſtates upon Condition. And a Condition annexed to the realty whereof Littleton here ſpeaketh in the legal underſtanding eſt modus, a quality annexed by him that hath Eſtate, intereſt, or right to the ſame, whereby an Eſtate, &c. may either be defeated, or inlarged, or, created upon an incertain event. Conditio dicitur, cum quid in caſum incertum qui poteſt tendere ad eſſe aut non eſſe confertur. Glanvil Lib.10. cap.8. Bract. lib.2. ca.5,6,7. &c. lib.4. fol.213. Brit. cap.36. & fol.89.99.114,130.205, 206,207,249. Fleta lib.3. cap.9. & lib.5. cap.5. Mirr. c.2. Sect.15. & 17.

¶ *Sur condition en fait; quæ eſt facti*, that is, upon a condition expreſſed by the party in legal terms of Law.

¶ *Ou ſur Condition en ley, &c.* quæ eſt juris, that is, tacitè created by Law without any words uſed by the party. Again, Littleton ſubdivideth Conditions in deed (though not in expreſſe words) into Conditions precedent (of which it is ſaid, Conditio adimpleri debet priuſquam ſequatur effectus) and conditions ſubſequent. Again of conditions in deed, ſome be affirmative, and ſome in the negative: & ſome in the affirmative, which imply a negative: ſome make the eſtate whereunto they are annexed, voidable by entry or claim; & ſome make the eſtate void, ipſo

ipſo facto, without entry or claim.

Alſo of conditions in deed, ſome be annexed to the Rent reſerved out of the land, and ſome to collateral acts, &c. ſome be ſingle, ſome in the conjunctive, ſome in the diſjunctive, as ſhall evidently appear in this Chapter, where the examples of theſe diviſions ſhall be explained in their proper place.

Mir. cap. 2. Sect. 15. & 17.

¶ *En ley, &c.* Of conditions in Law more ſhall be ſaid hereafter in this Chapter.

¶ *Sur condition en fait, eſt ſicome un home per fait indent, &c.* Here Littleton putteth one example of ſix ſeveral kinds of conditions. That is, firſt, of a ſimple condition in deed. Secondly, of a condition ſubſequent to the Eſtate. Thirdly, a condition annexed to the rent, &c. Fourthly, a condition that defeateth the eſtate. Fifthly, a condition that defeateth not the eſtate before an entry. And laſtly, a condition in the affirmative, which implieth a negative (as behind or unpaid implieth a negative) viz. not paid. All which do appear by the expreſſe words of Littleton.

per un mois apres aſcun jour de payment de ceo, ou p un demy, &c. que adonques bien lirroit a le feoffor & a les heires dentrer, &c. En ceux caſes ſi le rent ne ſoit pay a tiel temps ou devant tiel temps limit & ſpecifie deins le condition compriſes en lendenture, donques poit le feoffor ou ſes heires enter en tielx terres ou tenements, & eux en ſon primer eſtate aver & tener, & de ceo ouſte le feoffée tout net. Et eſt appelle eſtate ſur condition pur ceo que leſtate le feoffée eſt defeaſible ſi le condition ne ſoit perform, &c.

for and his heirs to enter, &c. In theſe caſes if the Rent be not paid at ſuch time or before ſuch time limited and ſpecified within the Condition compriſed in the Indenture, then may the Feoffor or his heirs enter into ſuch lands or Tenements, and them in his former eſtate to have and hold, and the Feoffee quite to ouſte thereof. And it is called an Eſtate upon Condition, becauſe that the ſtate of the Feoffee is defeaſible if the Condition be not performed, &c.

¶ *Rend a luy certaine rent, &c.* Here by this (&c.) is implied for life, in tail, or in fee.

Et en ceſt caſe ſi le rent ne ſoit pay a tiel temps, &c. donques poit le feoffor ou ſes heires entrer, &c. By this Section, and by the (&c.) therein contained ſix things are to be underſtood.

First, where our Author ſaith, Si le rent ſoit arere, that though the Rent be behind and not paid, (b) yet if the Feoffor doth not demand the ſame, &c. he ſhall never re-enter, becauſe the land is the principall debtor, for the Rent iſſueth out of the land, and in an Aſſiſe for the Rent the land ſhall be put in view; and if the land be evicted by a title paramount, the Rent is avoided; and after ſuch eviction the perſon of the Feoffée ſhall not be charged therewith, for the perſon of the Feoffée was onely charged with the Rent in reſpect of the grant out of the land.

(b) 40 Aſſ. 11. 20 H. 6. 30. 31. 6 H. 7. 7. 19 H. 6. 76. 20 H. 6. 32. 22 H. 6. 46. Pl. Com. Kidwelys caſe fol. 70. & Hill & Oranges caſe fol. 73.

Secondly, the demand muſt be made upon the land, becauſe the land is the debtor, and that is the place of demand appointed by Law.

If the King maketh a leaſe for years, rendring a Rent payable at his Receipt at Weſtminſter, and after the King granteth the reverſion to another, and his heirs, the Grantee ſhall demand the Rent upon the land, and not at the Kings Receipt at Weſtminſter, for as the Law without expreſſe words doth appoint the Leſſee in the Kings caſe to pay it at the Kings Receipt, ſo in caſe of a Subject, the Law appoints the demand to be on the Land.

Lib. 4. fol. 72, 73. Boroughs caſe.

If there be a houſe upon the ſame, he muſt demand the Rent at the houſe. And he cannot demand it at the back door of the houſe, but at the fore door, becauſe the demand muſt ever be made at the moſt notorious place. And it is not material whether any perſon be there or no.

49 Aſſ. 5. 15. Eliz. Dier 329.

Albeit the Feoffée be in the Hall, or other part of the houſe, yet the Feoffor need not (c) but come to the fore-door, for that is the place appointed by Law, albeit the door be open.

(c) Bendloes in Treſp. 4. & 5. Ph. & Mar.

(d) If

(d) If the feoffment were made of a wood only, the demand muſt be made at the gate of the wood, or at ſome high way leading through the wood, or other moſt notorious place. And if one place be as notorious as another, the feoffor hath election to demand it at which he will; and albeit the Feoffee be in ſome other part of the wood ready to pay the Rent, yet that ſhall not avail him. Et ſic de ſimilibus. (d) 15 Eliz. Dier 329.

Thirdly, And if the Feoffor demand it on the ground at a place which is not moſt notorious, as at the back-door of a houſe, &c. and in pleading the Feoffor allege a demand of the Rent generally at the houſe, the Feoffee may traverſe the demand, and upon the evidence it ſhall be found for him, for that it was a void demand.

Fourthly, If the Rent be reſerved to be paid at any place from the Land, yet it is in Law a Rent, and the Feoffor muſt demand it at the place appointed by the parties, obſerving that which hath been ſaid before concerning the moſt notorious place. Lib. 4. Boroughs caſe fol. 73. Pl. Com. 70.

Fifthly, And all this is to be underſtood when the Feoffee is abſent; for if the Feoffee cometh to the Feoffor at any place upon any part of the ground at the day of payment, and offer his Rent, albeit they be not at the moſt notorious place, nor at the laſt inſtant, the Feoffor is bound to receive it, or elſe he ſhall not take any advantage of any demand of the Rent for that day.

Sixthly, therefore the place of demand being now known, it is further to be known what time the Law hath appointed for the ſame. This partly appeareth by that which hath been laſt ſaid. For albeit the laſt time of demand of the Rent is ſuch a convenient time before the Sun ſetting of the laſt day of payment, as the money may be numbred and received, notwithſtanding, if the tender be made to him that is to receive it upon any part of the land at any time of the laſt day of payment, and he refuſeth, the condition is ſaved for that time; for by the expreſſe reſervation, the money is to be paid on the day indefinitely; and convenient time before the laſt inſtant, is the uttermoſt time appointed by Law, to the intent that then both parties ſhould meet together, the one to demand and receive, and the other to pay it, ſo as the one ſhould not prevent the other. But if the parties meet upon any part of the land whatſoever, on the ſame day, the tender ſhall ſave the Condition for ever for that time.

And if the reſervation of the Rent be (as here Littleton putteth the caſe) at certain feaſts, with condition that if it happen the Rent to be behind, by the ſpace of a week after any day of payment, &c. In this caſe the Feoffor needeth not demand it on the laſt day, but the uttermoſt time for the demand is a convenient time (as hath been ſaid) before the laſt day of the week, unleſſe before that the Feoffee meet the Feoffor upon the Land, and tender the Rent, as is aforeſaid. Lib. 5. fol. 114. Wades caſe. Pl. Com. Hill & Granges caſe 167. 172. 20 H. 6. 30, 31. 6 H. 7. 3.

If a Rent be granted payable at a certain day, and it be behind, and demanded, that the Grantee ſhall diſtrain for it: In this caſe the Grantee need not demand it at the day, but if he demand it at any time after he ſhall diſtrain for it, for the Grantee hath election in this caſe to demand it when he will to enable him to diſtrain. Mich. 40 & 41. Eliz. inter Stanly and Read. Lib. 7. fol. 28. Maundes caſe.

¶ *Et eux en ſon primer eſtate aver, &c.* Regularly it is true, that he that entereth for a condition broken ſhall be ſeiſed in his firſt eſtate, or of that eſtate which he had at the time of the eſtate made upon condition; but yet this faileth in many caſes. 8 H. 7. 7. b.

Firſt in reſpect of impoſſibility. As if a man ſeiſed of lands in the right of his wife, maketh a feoffment in fee by deed indented, upon condition that the Feoffee ſhould reenfeoff the land to the Feoffor for his life, &c. the husband dieth, the condition is broken; in this caſe the heir of the husband ſhall enter for the condition broken; but it is impoſſible for him to have the eſtate that the Feoffor had at the time of the condition made: For therein he had but an eſtate in the right of his wife, which by the reverture was diſſolved. And therefore when the heir hath entred for the condition broken, and defeated the Feoffment, his eſtate doth vaniſh, and preſently the ſtate is veſted in the wife. 4 H. 6. 2. Li. 8. fol. 43, 44. Whittinghams caſe. 5 H. 7. 6. a.

2. In reſpect of Neceſſity. If Ceſtuy que uſe after the Statute of R. 3. and before the Statute of 27 H. 8. had made a Feoffment in fee upon condition, and after had entred for the condition broken, In this caſe he had but an uſe when the Feoffment was made; but now he ſhall be ſeiſed of the whole ſtate of the land. So that as in the former caſe, the Anceſtor had ſomewhat at the making of the condition, and the heir ſhall have nothing when he hath entred for the condition broken, ſo in this caſe the Feoffor had no eſtate or intereſt in the land at the time of the condition made, but a bare uſe; yet after his entry for the condition broken, he ſhall be ſeiſed of the whole eſtate in the land, and that alſo for neceſſity; for by the Feoffment in fee of Ceſtuy que uſe, the whole eſtate and right was deveſted out of the Feoffees. And therefore of neceſſity the Feoffor muſt gain the whole eſtate by his entry for the condition broken.

Tenant in ſpecial tail hath iſſue, and his wife dieth. Tenant in tail maketh a feoffment in fee upon condition, the iſſue dieth, the condition is broken, the Feoffor reenters, he ſhall have

have but an estate for life as Tenant in tail apres possibility of issue extinct by the re-entry, and yet he had an estate tail at the time of the Feoffment, and that also for necessity.

3. In some cases the Feoffor by his re-entry shall be in his former estate, but not in respect of some collateral qualities. As if Tenant by homage Ancestrel maketh a Feoffment in fee upon Condition, and entreth upon the Condition broken, it shall never be holden by Homage Ancestrel again. And so it is if a Copyhold escheat, and the Lord maketh a Feoffement in fee upon condition, and entreth for the condition broken. And the reason in both these cases is, for that the custome or prescription for the time is interrupted.

19 Ass. 12. Lord and Tenant by fealty and Rent, the Lord is in seisin of his Rent, the Lord granteth his Seigniory to another and to his heirs upon condition, the Tenant attorneth and payeth his Rent to the Grantee, the condition is broken, the Lord distreineth for his Rent, and Rescous is made, he shall be in his former estate, and yet the former seisin shall not enable him to have an Assise without a new seisin.

8 H.7.7. If Tenant in tail make a Feoffment in fee upon condition, and dieth, the issue in tail within age doth enter for the condition broken, he shall be first in as Tenant in fee simple, as heir to his father, and consequently and instantly he shall be remitted. But if the heir be of full age, he shall not be remitted, because he might have had his Formedon against the feoffee, and the entry for the Condition is his own act. But more shall be said hereof in his proper place in the Chapter of Remitter.

1 H.6.4. If a man make a Feoffment in fee of black acre and white acre, upon condition, &c. and for breach thereof that he shall enter into black acre, this is good.

43 Ass.47. 13 E.4.4. 2 H.5.7. b. 39 Ass.15. 11 H.5.25. 16 Ass.47. If Tenant for life make a Feoffment in fee upon condition, and entreth for the Condition broken, he shall be Tenant for life again, but subject to a forfeiture, for the state is reduced, but the forfeiture is not purged.

Sect. 326.

Vide sect. 232. 19 E.3. tit. barre. 280. 19 R.2. done rent ro. Pl. Com. 524.

¶ EN meisme le manner est si terres sont dones en le tail, ou lesses a term de vie ou des ans, sur condition, &c.

IN the same manner it is, if Lands be given in tail, or let for term of life or of years, upon condition, &c.

¶ *Sur condition, &c.* This implieth the several kinds of conditions in Deed before specified.

Sect. 327.

(b) 20 E.3. tit. Covenant 3. ¶ ET *la terre tener tanque ils soyent satisfies ou paies, de le rent aderere, &c.* By this it is implied that if such a feoffment be made reserving (b) (for example) 8. Marks Rent at the feast of Easter with such a Condition as is aforesaid, the Feoffor at the feast day demands the Rent, the Feoffee payeth unto him 6. Marks parcel of the Rent, the Feoffor entreth into the lands, and taketh the profits towards satisfaction. Afterwards the Feoffee doth tender the two Marks residue of the Rent to the Feoffor upon the land, who refuseth it. If

¶ MEs lou feoffement est fait de certaine terres reservant certaine rent, &c. sur tiel condition que si le rent soit aderere, que bien lirroit al feoffor, & ses heires, dentrer, & la terre tener tanq; ils soient satisfies ou payes de le rent aderere, &c. En cest case si le rent soit aderere, & le feoffor ou ses heires enter, le

BUt where a feoffment is made of certain Lands reserving a certain Rent, &c. upon such condition that if the rent be behind, that it shall be lawful for the feoffor and his heirs to enter, & to hold the land until he be satisfied or payed the rent behind, &c. In this case if the rent be behind, and the feoffor or his

feoffee

feoffee neſt pas exclude de ceo tout net, mes le feoffor avera et tiendra la terre et prendra ent les profits tanque il ſoit ſatisfie de le rent aderere, e quant il eſt ſatisfie, donque poyet le feoffee re-enter en meſm̃ la terr̃, et ceo tener come il tenoit avevant. Car en tiel cas le feoffor avera la t̃re forſque en manner cõe pur un diſtres, tanque il ſoit ſatisfie ð le rent, &c. cõment q̃ il prendre les profits en le meſme temps a ſon uſe demeſme, &c.

heirs enter, the Feoffee is not altogether excluded from this, but the Feoffor ſhall have and hold the Land, and thereof take the profits untill he be ſatisfied of the Rent behind; and when he is ſatisfied, then may the Feoffee re-enter into the ſame Land, and hold it as he held it before. For in this caſe the Feoffor ſhall have the Land but in manner as for a diſtreſſe, until he be ſatisfied of the Rent, &c. though he take the profits in the mean time to his own uſe, &c.

hath bæn adjudged that the Feoffee upon the refuſal may enter into the Land; for when the Feoffor is ſatisfied either by perception of the profits, or by payment, or tender and refuſal, or partly by the one and partly by the other, the Feoffee may re-enter into the Land. And this is within the words of Littleton, viz. (Until he be ſatisfied.) And albeit the Feoffor hath accepted part of his rent, yet he may enter for the Condition broken, and retain the land until he be ſatisfied of the whole. All which is worthy of obſervation.

¶ *Et en tiel caſe le Feoffor avera le terre forſque en manner come un diſtreſſe tanque il ſoit ſatisfie de la rent, &c.*

By this it appeareth that the Feoffor by his re-entry gaineth no eſtate of Freehold, but an intereſt by the agreement of the parties to take the profits in nature of a Diſtreſs. And therefore if a man maketh a Leaſe for life, with a reſervation of a rent and ſuch a condition, if he enter upon the condition broken, and take the profits of the Land Quouſque, &c. he ſhall not have an action of debt for the rent Arere, for that the Freehold of the Leſſee doth continue, and therefore the book (c) that ſeemeth to the contrary is falſe printed; and the true caſe was of a leaſe for years, as it appeareth afterwards in the ſame page of the leafe.

(c) 30 E. 3. fol. 7.

But herein alſo a diverſity worthy the obſervation is implied, viz. If a man make a Leaſe for years, reſerving a rent, with a condition that if the rent be behind, that the Leſſor ſhall re-enter, and take the profits until thereof he be ſatisfied, there the profits ſhall be counted as a parcel of the ſatisfaction; and during the time that he ſo taketh the profits, he ſhall not have an action of debt for the rent, for the ſatisfaction whereof he taketh the profits. But if the condition be, that he ſhall take the profits until the Feoffor be ſatisfied or paid of the rent, without ſaying (thereof) or to the like effect, there the profits ſhall be accounted no part of the ſatisfaction, but to haſten the Leſſor to pay it; and as Littleton here ſaith, that until he be ſatisfied, he ſhall take the profits in the mean time to his own uſe.

30 E. 3. 7. vide ſemblable 27 H. 8. 4. 43 E. 3. 31. 31 Aſſ. Pl. 26. Vid. le ſtatute de Merton, cap. 6. and obſerve theſe words, quod inde percipere poſſint duplicem valorem, &c. Et ca. 7. without this word (Inde.)

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¶ ITem, divers parolx (enſ auters) y ſont, queux y vertue de eux meſmes ſont eſtates ſur condition, un eſt le parol Sub conditione: Sicome A. enfeoffa B.

ALſo divers words (amongſt others) there be which by vertue of themſelves make eſtates upon condition, one is the word (*Sub condit.*) as if *A.* infeoffe *B.* of cer-

¶ HEre in this and the next two Sections Littleton doth put four examples of words that make Conditions in Deed, and firſt, Sub conditione. This is the moſt expreſs and proper Condition in Deed, and therefore our Author beginneth with it.

¶ *Talem redditum, &c.*

This

Sub conditione.
(c) Maria, Dier 138. 27 H. 8. 15. 13 H. 4. entr. Cong. 57. 29 Aſſ. 7. 33 Aſſ. 11. 40 Aſſ. 13. Bracton ubi ſupra. Flet. lib. 4. cap. 9. Brit. cap. 36. & ubi ſupra.

This (&c.) impliſeth any other rent or ſum in groſſe, or any collateral condition whatſoever, either to be performed by the Feoffee, (whereof our Author here putteth his caſe) or by the Feoffor, and extendeth to all kinds of Conditions in Deed, before ſpecified.

Vide Sect. 325.

de certeine terre, habendum & tenendum eidem B. & hæredibus ſuis, ſub conditione, quod idem B. & hæredes ſui ſolvant ſeu ſolvi faciant præfat' A. & hæredibus ſuis annuatim talem redditum, &c. En teſt caſe ſans aſcun pluis dire le Feoffee ad eſtate ſur condition.

tain land, To have and to hold to the ſaid *B.* and his heirs, upon condition that the ſaid *B.* and his heirs do pay or cauſe to be paid to the aforeſaid *A.* and his heirs, yearly, ſuch a rent, &c. In this caſe, without any more ſaying, the Feoffee hath an eſtate upon condition.

Sect. 329.

Proviſo. Vid. Sect. 220. Dier 28 H. 8 fol. 13. 27 H. 8. fol. 14, 15. 13 H. 4. Entre Cong. 57. Seignior Cromwels Caſe. Lib. 2. fol. 71, 72. at large. 35 H. 8. tit. condition Br. Lib. 8. 89. Frances Caſe.

¶ *Proviſo ſemper qd' B. ſolvat, &c.*

Our Author putteth his caſe where a Proviſo cometh alone. And ſo it is if a man by Indenture letteth Lands for years, provided always, and it is covenanted and agreed between the ſaid Parties, That the Leſſee ſhould not alien; and it was adjudged that this was a condition by force of the Proviſo; and a conant by force of the other words.

This word Proviſo ſhall be alſo taken as a limitation or qualification, as hereafter in his proper place ſhall be ſaid. And ſometime it ſhall amount to a Covenant. All which do appear by the authorities in the margent. *

(*) 27 H. 8. 19, &c. Ita quod. Flet. lib. 4. cap. 9. Bracton ubi ſupra. Britton ubi ſupra.

For the (&c.) in this Section, explanation is made in the Section next before.

¶ *Mes ſi les parols fueront tiels,* Proviſo ſemper quod prædict' *B.* ſolvat, ſeu ſolvi faciat præfato *A.* talem redditum, &c. ou fueront tiels, Ita quod prædict' *B.* ſolvat ſeu ſolvi faciat præfato *A.* talem redditum, &c. En ceux cales ſauns pluis dire, le Feoffee nad eſtate forſque ſur condition, iſſint que ſil ne performall le condition, l' feoffor e ſes heires poyent entrer, &c.

ALſo if the words were ſuch, Provided always that the aforeſaid *B.* do pay or cauſe to be paid to the aforeſaid *A.* ſuch a rent, &c. Or theſe, ſo that the ſaid *B.* do pay or cauſe to be paid to the ſaid *A.* ſuch a rent, &c. In theſe caſes without more ſaying, the Feoffee hath but an eſtate upon condition: ſo as if he doth not perform the condition, the Feoffor and his heirs may enter, &c.

¶ *On fueront tiels.*

Ita quod. This is the third condition in Deed, whereof our Author makes mention.

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6 E. 2. Entric Cong. 63. 8 E. 2 Aſſ. 320. adjudged. Quod ſi contingat. Paſch. 37 Eliz. Rot. 254. inter Sayer & Hares in com. banco.

¶ *Quod ſi contingat, &c.*

This is the fourth condition in Deed, ſet down by our Author.

¶ *Dentrer, &c.* Hereby it is evident, That

¶ *Item auts parols ſont en un fait queux cauſont les Tenements eſtre Conditionals. Sicome ſur tiel feoſ-*

ALSO there be other words in a Deed which cauſe the Tenements to be conditional: As if upon ſuch a Feoffment

ment

ment un Rent eſt reſerve al Feoffor, &c. et puis ſoit mitte en le Fait ceſt parol, Quod ſi contingat redditum prædict' a retro fore in parte vel in toto, quod tunc benè licebit a le Feoffor et a ſes heirs dentr', &c. ceo eſt un fait ſur condition.

a rent be reſerved to the feoffor, &c. and afterward this word is put into the Deed, that if it happen the aforeſaid rent to be behind in part or in all, that then it ſhall be lawfull for the feoffor and his heirs to enter, &c. This is a Deed upon condition.

ſome words of themſelves do make a Condition, and ſome other (whereof our Author here and in the next Section * putteth an example) do not of themſelves make a condition without a concluſion & clauſeof re-entry And many times (Si) makes a Condition, and ſometimes a limitation, as hereafter ſhall be ſaid in this Chapter.

* Vide Sect. 331.

3 H.6.7. Si Fleta lib.4.cap.9. Br. lib.4.fol.213.b.

Ineſſe poteſt donationi modus, conditio, ſive cauſa. * Scito quòd (ut) modus eſt, (ſi) conditio (quia) cauſa.

* 4 Mar.Dier 138.b. Bract. ubi ſupra.

Conditio is explained before. Modus is at this day properly taken for a modification, limitation or qualification, for the which alſo the Law hath appointed apt words: and becauſe Littleton ſpeaketh of this alſo in the end of this Chapter, I will reſerve this matter to its proper place, where the Reader ſhall perceive excellent matter of learning touching this point.

Cauſa, The cauſe or conſideration of the Grant, and herein there is a diverſity between a gift of lands, and a gift of annuity or ſuch like. For example, If a man grant, an annuity pro una acra terræ, in this caſe this word pro ſheweth the cauſe of the Grant, and therefore amounteth to a condition; for if the acre of land be evicted by an elder title, the Annuity ſhall ceaſe, for ceſſante cauſa, ceſſat effectus.

Pro 24 E.3.34.

And ſo if an Annuity be granted pro decimis, &c. if the Grantee be unjuſtly diſturbed of the tithes, the Annuity ceaſeth. And ſo it is if an Annuity be granted pro concilio, and the Grantee refuſe to give counſel, the annuity ceaſeth. So if an annuity be granted quod præſtaret conſilium, this makes the grant conditional.

9 E 4.20. 32 E.3.Annu.36. 14 E.4.4. 15 E.4.2.b. 8 H.6.23. 5 E.2. tit.An.44. 41 E.3.19.32.E.1. Avowry 243 21 E 4.49. 22 E.4.28.

But if A. pro conſilio impenſo, &c, make a feoffment or a leaſe for life, of an acre, or pro una acra terræ, &c. albeit he denieth Counſel, or that the acre be evicted, yet A. ſhall not re-enter; for in this caſe there ought to be legal words of condition or qualification; for the cauſe or conſideration ſhall not avoid the ſtate of the feoffee; and the reaſon of this diverſity is for that the ſtate of the Land is executed, and the annuity executory.

35 H.6.2. 10 E.3.44. 5 E.2. 9 E.4.20. 15 E.4.2.

And yet ſometime in caſe of lands or tenements (Cauſa) ſhall make a Condition. As if a woman give lands to a man and his heires, cauſa matrimonii prælocuti, in this caſe if ſhe either marry the man, or the man refuſe to marry her, ſhe ſhall have the land again to her and to her heires. (e) But of the other ſide, if a man give land to a woman and to her heires, cauſâ matrimonii prælocuti, though he marry her, or the woman refuſe, he ſhall not have the lands again; for it ſtands not with the modeſty of women in this kind, to aſk advice of learned Counſel, as a man may and ought: * And the rather, for that in the caſe of the woman, ſhe may adverre the cauſe (or the reaſon aforeſaid) although it be not contained in the deed, yea though the feoffment be made without Deed.

Flet.lib.5.cap.34. 34 Aſſ. 1. 40.Aſſ. 13. (e) 5 E.2.cui in vita 34. tit. Condit.Br. 5 H.4.1.

If a man maketh a feoffment in fee ad faciendum, or faciendo, or eâ intentione, or ad effectum, or ad propoſitum, that the feoffee ſhall do or not do ſuch an act, none of theſe words make the ſtate in the land conditional; for in the judgment of the Law they are no words of condition, and ſo was it reſolved, Hill. 18. Eliz in Com. Banco, in the caſe of a common perſon; but in the caſe of the King, the ſaid or the like words do create a Condition; and ſo it is in the caſe of a Will of a common perſon, which caſe I my ſelf heard and obſerved.

* 12 E.1.1. Feoffment & Faites 114. F.N.B. 205. L. Vid. Sect. 365. Ad faciend. ea intentione &c. Dier 138. 7 H.4.22.31 H.8.tit.Condition 19 Br.Pl.Com.142. 38 H.6.33.36,37.Doct.& Stud.lib.2.cap.34. 27 H.8.18.a 32 E.3.Breve 291.

But for the avoyding of a Leaſe for yeares, ſuch preciſe words of condition are not ſo ſtrictly required as in caſe of freehold and inheritance. (f) For if a man by Deed make a Leaſe of a Mannor for years, in which there is a clauſe (And the ſaid Leſſee ſhall continually dwell upon the capital Meſſuage of the ſaid Manor, upon pain of forfeiture of the ſaid term) theſe words amount to a Condition.

(f) 7 E.6.Dier 79. 28 H.8.Dier 27.a. Subpœna forisfacturâ.

And ſo it is if ſuch a clauſe be in ſuch a Leaſe, Quòd non licebit, to the Leſſee, dare, vendere, vel concedere ſtatum, & ſub pœna forisfacturæ, this amounts to make the Leaſe for years defeaſible, and ſo was it adjudged in the Court of Common Pleas, (g) in Queen Elizabeths time; and the reaſon of the Court was, That a Leaſe for years was but a Contract, which may begin by word, and by word may be diſſolved.

Quod non licebit. 3 E. 6. Dier 65,66. 4 Mar.138. (g) Hil. 40 El.Rot. 1610. inter Brown & Ayer. Vid.Pl.Com.142. Br. & Beſtons caſe.

Sect.

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¶ Mes il eſt diverſity perenter ceſt parol (ſi contingat, &c.) & les parols prochein avantdits. Car ceux parolx, (ſi contingat, &c.) ne valent riens a tiel condition, ſi non que il ad ceux parolx ſubſequents, que luy liſt al feoffor & a ſes heires dentrer, &c. Mes en les cases avantdits, il ne beloign per la Ley, de mitter tiel clauſe (ſcilicet) que le Feoffor & ſes heires poyent entrer, &c. pur ceo que ils poyent faire ceo per force des parols avantdits, pur ceo q̄ ils imprreignont a eux meſmes in Ley un condition, ſcilicet, que le Feoffor & ſes heires poient entrer, &c. Uncore il eſt communement uſe en touts tiels cases avantdits de mitter les clauſes en les faits ſcilicet, ſi le rent ſoit aderere, &c. que bien lirroit a le Feoffor & a ſes heires dentre, &c. Et ceo eſt bien fait a cel intent pur declarer & exprreſſer a les lays gents que ne ſont apprriſes en la Ley, de le manner & le condition de le feoffment, &c. Sicome home ſeiſie de terre, leſſa meſme la terre a un auter per fait indent, pur terme des ans rendant a luy certain rent, il eſt uſe de mitter en le fait, que ſi le rent ſoit arere al jour de payment, ou per un ſemaigne, ou per un mois, &c. que adonque bien lirroit al Leſſor a diſtreiner, &c. uncore le leſſor poit diſtreyner ꝺ cõmon droit ꝓ le rent arrere, &c. coment que tiels parols ne unque fueront miſes en le Fait, &c.

BUt there is a diverſity between this word, *Si contingat*, *&c.* and the words next aforeſaid, *&c.* For theſe words, *Si contingat*, *&c.* are nought worth to ſuch a condition, unleſs it hath theſe words following, That it ſhall be lawfull for the Feoffor and his heires to enter, *&c.* but in the caſes aforeſaid, it is not neceſſary by the Law to put ſuch clauſe, *ſcilicet*, that the Feoffor and his heires may enter &c. becauſe they may do this by force of the words aforeſaid, for that they contain in themſelves a condition, *ſcilicet*, that the Feoffor and his heires may enter, *&c.* yet it is commonly uſed in all ſuch caſes aforeſaid, to put the clauſes in the Deeds, *ſcilicet*, if the Rent be behind, &c. that it ſhall be lawful to the Feoffor and his heirs to enter, &c. And this is well done, for this intent, to declare and expreſs to the Common people who are not learned in the Law of the manner and condition of the Feoffment, &c. And if a man ſeiſed of Land letteth the ſame Land to another by Deed indented for terme of years, rendring to him a certain Rent, it is uſed to be put into the Deed, that if the Rent be behind at the day of payment, or by the ſpace of a week or a moneth, *&c.* that then it ſhall be lawfull to the Leſſor to diſtrain, *&c.* yet the Leſſor may diſtrain of common right for the Rent behind, &c. though ſuch words were not put into the Deed, *&c.*

¶ *Ils*

¶ *Ils ne beſoigne per la ley de mitter tiel clauſe, &c.* Quæ dubitationis cauſa tollendæ inſeruntur, communem legem non lædunt. Et expreſſio eorum quæ tacite inſunt, nihil operatur.

¶ *Per un mois, &c.* Here albeit the clauſe of diſtreſs be added, That if the Rent be behind by the ſpace of a week or a moneth, that the Leſſor may diſtrain, yet he may diſtrain within the week or moneth, becauſe a diſtreſs is incident of common right to every rent ſervice. And the words be in the affirmative, and therefore cannot reſtrain that which is incident of common right.

The other (&c.) in this Section, upon that which hath been ſaid are evident.

Sect. 332.

¶ ITem ſi feoffment ſoit fait ſur tiel condition, que le feoffor paya al feoffee a certaine jour, &c. 40. l' dargent, que adonque le feoffor poit re-entrer, &c. en ceo cas le feoffée eſt appell tenant en mortgage, que eſt autant a dire en Francois come mortgage, et en Latin, Mortuum vadium. Et il ſemble que la cauſe, pur que il eſt appelle mortgage, eſt, pur ceo que il eſtoit en a werould ſi le feoffor doyt payer al jour limitte tiel ſomme, ou non: et ſil ne paya pas, donque le terre que il mitter en gage ſur condition de payment de le money, eſt ale de luy a touts jours, et iſſint mort a luy ſur condition, &c. et ſil paya le money, donqs eſt le gage mort quant a le Tenant, &c.

ITem, if a feoffment be made upon ſuch condition, that if the feoffor pay to the feoffee at a certain day, &c. forty pounds of money, that then the feoffor may re-enter, &c. In this caſe the feoffee is called Tenant in morgage, which is as much to ſay in French as mortgage, and in Latine *Mortuum vadium*. And it ſeemeth that the cauſe why it is called mortgage, is, for that it is doubtfull whether the feoffor will pay at the day limited ſuch a ſumme, or not: and if he doth not pay, then the Land which is put in pledge upon condition for the payment of the money is taken from him for ever, and ſo dead to him upon condition, &c. And if he doth pay the money, then the pledge is dead as to the Tenant, &c.

MOrtgage is derived (c) of two French words, viz. Mort, that is mortuum, and Gage, that is, vadium, or pignus. And it is called in Latine mortuum vadium, or mortgagium. Now it is called here Mortgage, or mortuum vadium, both for the reaſon here expreſſed by Littleton, as alſo to diſtinguiſh it from that which is called vivum vadium. Vivum autem dicitur vadium, quia nunquam moritur ex aliqua parte quod ex ſuis proventibus acquiratur. As if a man borrow an hundred pounds of another, and maketh an eſtate of Lands unto him untill he hath received the ſaid ſumme of the iſſues and the profits of the Lands, ſo as in this caſe neither money nor land dieth, or is loſt, (whereof Littleton hath ſpoken (d) before in this Chapter) and therefore it is called Vivum vadium.

(c) Glanvil li. 10. c. 6. & lib. 13. cap. 26, 27.

(d) vid. ſect. 327.

Sect. 333.

¶ ITem ſicome home poit faire feoffement en fee en Mortgage, iſſint home poit faire done en tail en Mortgage, et un leas pur terme d' vie, ou pur terme des ans en Mortgage, et touts tiels tenants ſont appels tenants en Mortgage, ſolongz les eſtates, que ils ont en la terre, &c.

ALſo as a man may make a feoffment in fee in Mortgage, ſo a man may make a gift in Tail in Mortgage, and a Leaſe for terme of life, or for terme of years in Mortgage. And all ſuch tenants are called tenants in Mortgage according to the eſtates which they have in the Land, &c.

This Section upon that which hath been ſaid needeth no farther explanation.

Sect. 334.

¶ QVe le feoffor paiera a tiel jour, &c. Albeit Conditions be not favoured, yet they are not alwayes taken literally, but in this caſe the Law enableth the heir that was not named to perform the conditions in four cauſes.

27 H. 8. 19. b. Li. 8. fo. 91. Frances caſe.

Firſt, becauſe there is a day limited, ſo as the heire cometh within the time limited by the Condition, for otherwiſe he could not do it, as ſhall be ſaid hereafter in this Chapter.

Secondly, for that the condition deſcends unto the heire, and therefore the Law that giveth him an intereſt in the condition, giveth him an ability to perform it,

Thirdly, for that the feoffee doth receive no damage or prejudice thereby (all theſe reaſons are expreſſly to be collected out of the words of Littleton) And theſe things being obſerved.

Fourthly, the intent and true meaning of the Condition ſhall be performed. And where it is here ſaid, that the heir may tender al jour aſſeſſe, &c. herein is implyed, that

¶ ITem ſi feoffement ſoit fait en mortgage ſur condition que le Feoffor payera tiel ſumme a tiel iour, &c. come eſt enter eux per lour fait endent accorde et limit, coment q̄ le feoffor mayſt devāt le jour de payment, &c. uncore ſi le heir le feoffor paya meſme le ſumme de mony a meſme le jour a le feoffee, ou tender a luy les deniers, et le feoffee ceo refuſa de receiver, donqz poit l' heire entrer l' terre, et uncore le condition eſt, que ſi le feoffour payera tiel ſumm̄ a tiel jour, &c. nient ſealant mention en le condition

ALſo if a feoffement be made in mortgage upon condition that the Feoffor ſhall pay ſuch a ſumme at ſuch a day, &c. as is between them by their Deed indented, agreed, and limited, although the Feoffor dyeth before the day of payment, &c. yet if the heire of the Feoffor pay the ſame ſumme of money at the ſame day to the Feoffee, or render to him the money, and the Feoffee refuſe to receive it: Then may the heire enter into the Land, and yet the condition is, that if the Feoffor ſhall pay ſuch a ſumme at ſuch a day, &c. not making men-

daſcun

dalcun payment deſt fait per ſon heire, mes pur ceo que le heire ad intereſſe de droit en le condition &c. et lentent fuit forſque que les deniers ſerront paies al jour aſſeſſe, &c. et le feoffée nad pluis damage, ſi il ſoit pay per l'heir, que ſil fuit pay per le pier, &c. Et pur ceſt cauſe, ſi le heire paya les deniers, ou tendera les deniers a le jour aſſeſſe, &c. et lauter ceo refuſa, il poit entrer, &c. Mes ſi un eſtrãger de ſa teſte demeſne, que nad alcun intereſſe, &c. voile tender les avantdits deniers al feoffee a le jour aſſeſſe, le Feoffée neſt pas tenus de ceo receiver.

tion in the condition of any payment to be made by his heir, but for that the heir hath intereſt of right in the condition, &c. and the intent was but that the money ſhould be paid at the day aſſeſſed, &c. and the Feoffee hath no more loſſe if it be paid by the heir, then if it were paid by the Father, &c. therefore if the heir pay the money or tender the money at the day limited, &c. and the other refuſe it, he may enter, &c. But if a ſtranger of his own head, who hath not any intereſt, &c. will tender the aforeſaid money to the Feoffee at the day appointed, the Feoffee is not bound to receive it.

the Executors or Adminiſtrators of the Mortgagor, or in default of them the Ordinary may alſo tender, as ſhall be ſaid (f) hereafter in this Chapter. But what if the Condition had been, if the Mortgagor or his heirs did pay, &c. and he dyed before the day without heir, ſo as the Condition became impoſſible, here it is to be obſerved, that where the Condition becometh impoſſible to be performed by the act of God, as by death, &c. the ſtate of the Feoffée ſhall not be avoided, as ſhall be ſaid hereafter in this Chapter. And therefore the Law here inableth the heir (of whom no mention was made in the Condition) to perform the Condition, leſt the inheritance ſhould be loſt, wherein divers diverſities are worthy of obſervation.

(f) Vide Sect. 337.

First, between a Condition annexed to a ſtate in Lands or Tenements upon a feoffment, gift in tail, &c. and a Condition of an Obligation, Recognizance, or ſuch like. (g) For if a Condition annexed to lands be poſſible at the making of the Condition, and become impoſſible by the act of God, yet the ſtate of the feoffée, &c.

(g) Pl. Com. 456. Wrothes caſe, 14 H. 7. 3. 15 H. 1. 14 E. 4. 3. 38 H. 6. 2, 3.

ſhall not be avoyded. As if a man maketh a feoffment in fee upon Condition, that the Feoffor ſhall within one year go to the City of Paris about the affaires of the Feoffée, and preſently after the Feoffor dieth, ſo as it is impoſſible by the Act of God, that the Condition ſhould be performed, yet the eſtate of the Feoffée is become abſolute; for though the Condition be ſubſequent to the ſtate, yet there is a precedency before the re-entry, viz. the performance of the Condition. And if the Land ſhould by conſtruction of Law be taken from the Feoffée, this ſhould worke a damage to the Feoffée, for that the Condition is not performed which was made for his benefit. And it appeareth by Littleton, that it muſt not be to the damage of the Feoffée; and ſo it is if the Feoffor ſhall appear in ſuch a Court the next Term, and before the day the Feoffor dieth, the eſtate of the Feoffée is abſolute. (h) But if a man be bound by Recognizance or Bond with Condition that he ſhall appear the next Tearm in ſuch a Court, and before the day the Conuſee or Obligor dieth, the Recogniſance or Obligation is ſaved, and the reaſon of the diverſity is, becauſe the ſtate of the Land is executed and ſetled in the Feoffée, and cannot be returned back again but by matter ſubſequent, viz. the performance of the Condition. But the Bond or Recogniſance is a thing in Action and executory, whereof no advantage can be taken untill there be a default in the Obligor; and therefore in all caſes where a Condition of a Bond, Recogniſance, &c. is poſſible at the time of the making of the Condition, and before the ſame can be performed the Condition becomes impoſſible by the Act of God, or of the Law, or of the Obligee, &c. there the Obligation, &c. is ſaved. But if the Condition of a Bond, &c. be impoſſible at the time of the making of the Condition, the Obligation, &c. is ſingle. And ſo it is in caſe of a feoffment in fee with Condition ſubſequent, that is impoſſible, the ſtate of the Feoffée is abſolute, but if the Condition precedent be impoſſible, no

(h) 15 H. 7. 18. 31 H. 6. barre 60. 18 E. 4. 17. 9 Eliz. 262. Dier li. 5. 22. Laughters caſe, 38 H. 6. 2.

Fleta li. 4. ca. 9. & Bracton, & Britton ubi ſup.

14 H.8.28. 10 H.7.22. 4 H.7 8. 8 E.4.1. 28 H. 8.25. Lib.5. fol.22. Laughters case & 75, 39 E. 3. 5. 17 H.6. Obligat.18. 5 El. Dier 222.

state or interest shall grow thereupon. And to illustrate these by examples. you shall understand; If a man be bound in an Obligation, &c. with condition that if the Obligor do go from the Church of St Peter in Westminster to the Church of St Peter in Rome within three hours, that then the Obligation shall be void. The condition is void and impossible, and the Obligation standeth good.

And so it is, if a feoffment be made upon condition that the Feoffee shall go as is aforesaid, the state of the Feoffee is absolute, and the condition impossible and void.

* Pl. Co. Fullers case 272.

If a man make a lease for life upon condition, that if the Lessee go to Rome as is aforesaid, that then he shall have a fee, the condition precedent is impossible and void, and therefore no fee simple can grow to the Lessee.

35 H.6. tit. Barre 262. 37 H.6. Barre 60. 2 E.3. 9. 9 Eliz. Dier 262. 28 H. 8. 30.

If a man make a feoffment in fee upon condition that the Feoffee shall re-infeoffe him before such a day, and before the day the Feoffor disseise the Feoffee, and hold him out by force until the day be past, the state of the Feoffee is absolute, for the Feoffor is the cause wherefore the condition cannot be performed, and therefore shall never take advantage for non-performance thereof. (i) And so it is if A. be bound to B. that I. S. shall marry Jane G. before such a day, and before the day B. marry with Jane, he shall never take advantage of the bond, for that he himself is the mean that the condition could never be performed. And this is regularly true in all cases.

(i) 4 H.7.4.30 H.8. Dier 42. 11 H.4.57. in protection 10.H.7.18.

But it is commonly holden (k) that if the condition of a Bond, &c. be against Law, that the Bond it self is void.

(k) Vi. Bracton, Britton, Fleta ubi supra. Bracton lib.3.fol.100. 2 H.4.9 8 E.4.12.b. 2 E.4.2. & 3. 4 H.7.4.b. 10 H.7.22. 14 H.8.28. 42 E.3.6.23.

But herein the Law distinguishing between a condition against Law for the doing of any act that is Malum in se, and a Condition against Law (that concerneth not any thing that is malum in se) but therefore is against Law, because, it is either repugnant to the state, or against some maxime or rule in Law. And therefore the common opinion is to be understood of conditions against Law for the doing of some act that is malum in se, and yet therein also the Law distinguisheth. As if a man be bound upon condition that he shall kill I. S. the bond is void.

2 H. 4. 9.

But if a man make a feoffment upon condition that the Feoffee shall kill I. S, the estate is absolute, and the condition void.

Pl. Com. Brownings case 133.

If a man make a feoffment in fee, upon condition that he shall alien, this condition is repugnant and against Law, and the state of the Feoffee is absolute (whereof more shall be said in his proper place.) But if the Feoffee be bound in a bond that the Feoffee or his heirs shall not alien, this is good, for he may notwithstanding alien, if he will forfeit his bond that he himself hath made.

7 H.6.43.b. 21 H.6.33. 21 H.7.11. 21 H.7.30. 20 E. 4. 8. Pl. Com. in Browning case 133.a. 27 H.8.

So it is, if a man make a feoffment in fee, upon condition that the Feoffee shall not take the profits of the land, this condition is repugnant and against Law, and the state is absolute.

But a bond with a condition that a Feoffee shall not take the profits, is good. If a man be bound, with a condition to infeoffe his wife, the condition is void and against Law, because it is against a maxime in Law, and yet the bond is good; but if he be bound to pay his wife money, that is good. Et sic de similibus, whereof there be plentiful Authorities in our books.

Vide Sect. 325.

¶ *Tenders les deniers al jour assesse, &c.* Note, hereby is implyed, that albeit convenient time before sun-set be the last time given to the Feoffor to tender, yet if he tender it to the person of the Mortgagee at any time of the day of payment, and he refuseth it, the condition is saved for that time.

¶ *Il poit enter, &c.* And so may his heir after his death.

Vide Sect.401. Hill. 28 Eliz. in Banco Regis inter Watkins & Astwicke pro terris in Com. Devon. 45 E.3. tit. Release 28. 32 E.1. tit. Annuity 51. 33 H.6.18.

¶ *Mes si estranger de sa teste demesne que nad ascun interesse, &c. voile tender les avant dits deniers al feoffee al jour assesse, le feoffee nest pas tenus ceo receiver.* Nota, by this period and the (&c.) it is implied that if the Mortgagor die, his heir within age of 14. years (the land being holden in Socage) the next of kin to whom the land cannot descend being his Gardian in Socage, may tender in the name of the heir, because he hath an interest as Gardian in Socage. Also if the heir be within age of 21. years, and the land is holden by Knights Service, the Lord of whom the land is holden may make the tender for his interest which he shall have when the condition is performed, for these in respect of their interest are not accounted estrangers.

But if the heir be an Idcot of what age soever, any man may make the tender for him, in respect of his absolute disability; and the Law in this case is grounded upon charity, and so in like cases.

36 H.6. tit. barre 166. 33 E.1.tit. Annuity 51. 35 E.3. Judgment 254.

¶ *Le Feoffee nest pas tenus de ceo receiver.* And note, that Littleton saith, that he is not bound to receive it at a strangers hand. But if any stranger in the name of

of the Mortgagor or his heir (without his consent or privity) tender the money, and the Mortgagee accepteth it, this is a good satisfaction; and the Mortgagor or his heir agreeing thereunto may re-enter into the land; Omnis ratihabitio retro trahitur & mandato æquiparatur. But the Mortgagor or his heir may disagree thereunto if he will.

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¶ ET memorandum que en tiel cas, lou tiel tender de le money est fait, &c. & le feoffee de receiver ceo refusa, per que le feoffor ou les heires entront, &c. donque le feoffee nad ascun remedy daver le money per le common ley, pur ceo que il serra rette sa folly que il refusa le money quant un loyal tender de ceo fuit fait a luy.

AND be it remembred that in such case, where such tender of the money is made, &c. and the Feoffee refuse to receive it, by which the feoffee or his heirs enter, &c. then the feoffee hath no remedy by the common Law to have this money, because it shall be accounted his own folly that he refused the money, when a lawful tender of it was made unto him.

¶ *Tender de le money est fait, &c.* Here is implied, at the due time and place according to the condition.

¶ *Entront, &c.* viz. into the lands or tenements.

¶ *Donque le feoffee nad ascun remedy daver le money per le common ley, &c.* And the reason is because the money is collateral to the Land, and the feoffee hath no remedy therefore. 8 E.2. tit. Ass.389. 31 Ass.32.

If an obligation of an hundred pound be made with condition for the payment of fifty pounds at a day, and at the day the Obligor tender the money, and the Obligee refuseth the same, yet in action of debt upon the Obligation if the Defendant plead the tender and refusal, he must also plead that he is yet ready to pay the money, and tender the same in Court. But if the Plaintiff will not then receive it, but take issue upon the tender, and the same be found against him, he hath lost the money for ever. 22 H.6.39. 22 E.4.25. 22 E.3.5. Lib.9. fol.79. H. Peytoes case.

If a man be bound in 200 quarters of wheat for delivery of a 100 quarters, if the Obligor tender at the day 100 quarters, &c. he shall not plead uncore prist, because albeit it be the parcel of the condition, yet they be Bona peritura, and it is a charge for the Obligor to keep them. And the reason wherefore in the case of the Obligation the summe mentioned in the condition is not lost by the tender and refusal, is not onely for that it is a duty and parcel of the Obligation, and therefore is not lost by the tender and refusal, but also for that the Obligee hath remedy by Law for the same. And in this case, Liberata pecunia non liberat offerentem. 8 E.2. tit. Ass.389.

But if a man make a single bond, or knowledg a Statute or Recognisance, and afterwards make a defeasance for the payment of a lesser sum at a day, if the Obligor or Conusor tender the lesser sum at the day, and the Obligee or Conusee refuseth it, he shall never have any remedy by Law to recover it, because it is no parcel of the sum contained in the Obligation, Statute or Recognisance, being contained in the defeasance made at the time or after the Obligation, Statute, or Recognisance. And in this case in pleading of the tender and refusal the party shall not be driven to plead, that he is yet ready to pay the same, or to tender it in Court: neither hath the Obligee or Conusee any remedy by Law to recover the sum contained in the Defeasance. (o) And so it is if a man make an Obligation of 100 pound, with condition for the delivery of Corn or timber, &c. or for the performance of an arbitrement of the doing of any act, &c. This is collateral to the Obligation, that is to say, is not parcel of it, and therefore a tender and refusal is a perpetual barre. 7 H.4.18.5. Mar. Dier 150. 21 E.4.25. 22 E.3.5. 33 H.6.2. b. 17 Ass. pl.2. 20 E.4.1. b. 9 H.6.16. 36 H.6.26. 15 E.4.1. 16 H.7.12. 18 E.3.53. 7 E.4.4. b. 19 H. 8.12. 27 H.8.1. 2. 22 H.6.39. tit. Abatement 11. 49 E.3.3. 19 H.6.12. (o) Henry Peytoes case. ubi supra. 31 Ass.25.11 H.4.33.1 H.6.8. 1 E.4. 17 E.4.3. Pl. Com. Fogasses case. fol.6.

But if a man be bound to make a feoffment in fee to the Obligee, and he make a lease and a release to him and his heirs, albeit this be a collateral condition, yet is it well performed, because this amounts in Law to a feoffment.

¶ *Money, moneta, Legalis moneta Angliæ.* Lawful money of England, either of Gold or Silver, is of two sorts, viz. the English money coyned by the Kings authority, Lib.5. fol. 114,115. Wades case, Lib.9. fol.78.

authority, or forrein coyn by proclamation made currant within the Realm, Coyne, cuna, dicitur a cudendo, Coyning of money. In French, Coin ſignifieth a corner, becauſe in ancient time money was ſquare with corners, as it is in ſome countries at this day. Some ſay that Coine dicitur a κοινὸς, id eſt, communis, quod ſit omnibus rebus communis. Moneta dicitur a monendo, not onely becauſe he that hath it is to be warned providently to uſe it, but

Ariſtotle lib. 5. cap. 8. alſo becauſe Nota illa de authore & valore admonet. Pecunia dicitur a Pecus, beaſts, Omnes enim veterum divitiæ in animalibus conſiſtebant; and it appeareth that in Homers time there was no money, but exchange of cattle, &c.

(*) 9 H. 5. Stat. 2. cap. 7. Nummus οὐ τῷ νόμῳ, quia lege ſit, non natura. Vide * the Statute of 9 H. 5. of the noble, half noble, and farthing of gold, which is the fourth part of a noble, and that is 20. pence.

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12 E. 3. Condit. 8. 12. Ed. 3. fol. 10. 12. Aſſ. 5.

¶ *ET ſil faile de payer les deniers, &c.*

If a man make a feoffement of Lands, To have and to hold to him and to his heirs, upon Condition, That if the Feoffee pay to the Feoffor at ſuch a day twenty pounds, that then the Feoffee ſhall have the Lands to him and his heirs: If the condition had not proceeded further, it had been void, for that the Feoffee had a fee ſimple by the firſt words, and therefore the words ſubſequent are materially added, (And if he fail to pay the mo-

Li. 5. fo. 96, 97. Goodales caſe. ney, &c.)

¶ *Le ſecond Feoffee voile tender le ſumme des deniers, &c.*

Albeit the ſecond Feoffee be not named in the Condition, yet ſhall he tender the ſumme, becauſe he is privy in eſtate, and in judgment of Law hath an eſtate and intereſt in the condition, (as Littleton here ſaith) for the ſalvation of his Tenancy, Vid. Sect. 334. And note, he that hath intereſt in the condition on the one ſide, or in the Land on the other,

Li. 5. fo. 114, 115. Wades caſe. may tender.

And it is to be obſer-

¶ Item ſi feoffment ſoit fait ſur tiel condition, Que ſi le Feoffee paya al Feoffor tiel jour inter eux limit, ꝛc. l' adonques le Feoffee avera la Terre a luy & a ſes heires, & ſi faile de payer les deniers a le jour aſſeſſe, que adonque bien liſt a le Feoffor ou a ſes heires dentrer, &c. & puis devant le jour aſſeſſe, le Feoffee venda la terre a un auter, & de ceo fait feoffment a luy, en ceſt caſe ſi le ſecond Feoffee voile tender le ſumme de les deniers a le jour aſſeſſe a le Feoffor, & le Feoffor ceo refuſa, &c. donque le ſecond Feoffee ad eſtate en la terre clerement ſans condition. Et la cauſe eſt pur ceo que le ſecond Feoffee avoit intereſt en le condition pur ſalvation p̄ ſon Tenancy. Et en ceſt caſe il ſemble que ſi le primer Feoffee apres tiel vender de la terre voile tender le mony a

ALſo if a Feoffment be made on this condition, That if the Feoffee pay to the Feoffor at ſuch a day between them limited, twenty pounds, then the feoffee ſhall have the land to him and to his heirs; and if he fail to pay the money at the day appointed, that then it ſhall be lawful for the Feoffor or his Heirs to enter, &c. and afterwards before the day appointed the ſeoffee ſell the Land to another, and of this maketh a feoffment to him, in this caſe if the ſecond feoffee will tender the ſum of mony at the day appointed, to the feoffor, and the Feoffor refuſeth the ſame, *&c.* then the ſecond Feoffee hath an eſtate in the land clearly without condition. And the reaſon is, for that the ſecond feoffee hath an intereſt in the condition for the ſafegard of his tenancy: and in this caſe it ſeems that if the firſt

le

le jour aſſeſſe, &c. a le feoffor, ceo ſerra aſſets bone pur ſalvation deſtate de le ſecond Feoffee, pur ceo que le prime Feoffee fuit privy a le condition, & iſſint le tender de aſcun de eux deux eſt aſſets bone, &c.

feoffee after ſuch ſale of the land, will tender the money at the day appointed, *&c.* to the feoffor, this ſhall be good enough for the ſafegard of the eſtate of the ſecond Feoffee, becauſe the firſt Feoffee was privy to the condition, and ſo the tender of either of them two is good enough, *&c.*

ded alſo. That the feoffee may tender any mony that is currant within the Realm, albeit it be forreign coyn, ſo as it be currant by Act of Parliament, or by the Kings proclamation, as hath been ſaid.

¶ *Tender le ſumme.* The Feoffee may tender the money in purſes or bags, without ſhewing, or telling the ſame, for he doth that which he ought, viz. to bring the money in purſes or bags, which is the uſuall manner to carry money in, and then it is the part of the party that is to receive it, to put it out and tell it.

¶ *A primer feoffee.* Here it appeareth, that the firſt Feoffee may notwithſtanding his feoffment pay his money to the Feoffor, becauſe he is party and privy to the Condition, and by his tender may ſave the eſtate of his Feoffee, which in all good dealing he ought to do.

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¶ ITem ſi Feoffement ſoit fait ſur condition, Que ſi le Feoffor paya certaine ſumme dargent al Feoffee, adonques bien lirroit a Feoffor, et a ſes heirs dentrer: en teſt caſe ſi le Feoffor debie devant le payment fait, et le heire voile tender al Feoffee les deniers, tiel tender eſt voyd, pur ceo que le temps deins quel ceo doit eſtre fait eſt paſs, car quaunt le condition eſt, que ſi le Feoffor paya les deniers al Feoffee, &c. ceo eſt tant adire, que ſi le Feoffor durant ſa vie paya les deniers al Feoffee, &c. et quant le Feoffor mortuſt, donques le temps

ALſo if a feoffment be made upon condition, That if the Feoffor pay a certain ſumme of money to the Feoffee, then it ſhall be lawfull to the Feoffor and his heirs to enter. In this caſe if the Feoffee die before the payment made, and the heir will tender to the Feoffee the money, ſuch tender is void, becauſe the time within which this ought to be done, is paſt. For when the condition is, That if the Feoffor pay the money to the Feoffee, &c. this is as much to ſay, as if the Feoffor during his life pay the money to the Feoffee, &c. and when the feof-

¶ THis diverſity is plain and evident, and agreeth with our (a) Books, and yet ſomewhat ſhall be obſerved hereupon: for here it appeareth, That ſeing no time is limited, the Law doth appoint the time, and that is during the life of the Feoffor, (wherein divers diverſities are worthy the obſervation:

(a) 14 H.7.31. 13 H.7.1.

First, Between this caſe that Littleton here putteth, of the condition of a Feoffment in fee, for the payment of money where no time is limited, and the condition of a Bond for the payment of a ſumme of money where no time is limited: for in ſuch a condition of a Bond the money is to be paid preſently, that is, in convenient time. (b) And yet in caſe of a condition of a bond there is a diverſity between a condition of an Obligation, which concernes the doing of a tranſitory act without limitation of any time, as payment of money, delivery of Charters, or the like; for there the condition is to be performed preſently, that is, in convenient time, and when by the condition of the Obligation the act that is to be don:

44 E.3.9. 33 H.6.43. & 48.b. 4 E.4.29.9 E.4.22. 15 E.4.30. 21 E.4.38.b. 9 H.7.17.b. 10 H.7.13. 14 H.8.21. a. & 29. b.

(b) Lib.6. fo. 30,31. Bonthies caſe 33 H.6.47,48.

done to the Obligee is of his own nature local, for there the Obligor (no time being limited) hath time during his life, to perform it, as to make a Feoffment, &c. if the Obligee doth not haſten the ſame by requeſt.

3. In caſe where the condition of the Obligation is local, there is alſo a diverſity, when the concurrence of the Obligor and the Obligee is requiſite, (as in the ſaid caſe of the Feoffment) and when the Obligor may perform it in the abſence of the Obligee, as to knowledge ſatisfaction in the Court of Kings Bench.

(*) Boothies caſe; ubi ſupra. (*) although the knowledge of ſatisfaction is local, yet becauſe he may do it in the abſence of the Obligee, he muſt do it in convenient time, and hath not time during his life.

4. Another diverſity is, where the condition concerneth a tranſitory or local act, and is to be performed to the feoffee or Obligee, and where it is to be performed to a ſtranger: as if A. be bound to B. to pay ten pounds to C. A. tender to C. and he refuſeth, the Bond is forfeited, as in the Section ſhall be ſaid more at large.

5. Another diverſity is between a condition of an Obligation, and a condition upon a Feoffment, where the Act that is local is to be done to a ſtranger, and where to the Obligee or Feoffor himſelf.

de le tender eſt paſſe. Mes auterment eſt lou un jour de payment eſt limit, & le feoffor devie devaunt le jour, donque poit le heire tender les deniers, come eſt avaundit, pur ceo que le temps de le tender ne fuit paſſe per le mort del feoffor. Auxy il ſemble que en tiel caſe lou le feoffor devy devant le jour de payment, ſi les Executors de le feoffor tenderont les deniers al feoffée al jour de payment, cel tender eſt aſſets bone. Et ſi le feoffee ceo refuſe, les heires de feoffor poient entrer, &c. Et le cauſe eſt, pur ceo que les Executors repreſentont le perſon lour Teſtator, &c.

for dieth, then the time of the tender is paſt. But otherwiſe it is where a day of payment is limited, and the Feoffor die before the day, then may the heir tender the money as is aforeſaid, for that the time of the tender was not paſt by the death of the Feoffor. Alſo it ſeemeth, that in ſuch caſe where the Feoffor dieth before the day of payment, if the Executors of the Feoffor tender the money to the Feoffee at the day of payment; this tender is good enough; and if the Feoffee refuſe it, the heirs of the Feoffor may enter, &c. And the reaſon is, for that the Executors repreſent the perſon of their Teſtator, &c.

Boothies caſe fl. 6. fol. 31. Lib. 2. fol. 79. b. Seignior Cromwels caſe 44 E. 3. 9. 21 E. 3. 41. 2 E. 4. 3. 4. 19 H. 6. 67. 73. 76. 3 E. 4. 4. b. 26 H. 8. 9. b.

As if one make a Feoffment in fee, upon condition that the Feoffee ſhall infeoffe a ſtranger, and no time limited, the Feoffee ſhall not have time during his life to make the feoffment, for then he ſhould take the profits in the mean time to his own uſe, which the Eſtranger ought to have, and therefore he ought to make the feoffment as ſoon as conveniently he may, and ſo it is of the condition of an Obligation. But if the condition be, That the Feoffee ſhall re-infeoffe the Feoffor, there the Feoffee hath time during his life, for the nature of the condition between them, unleſſe he be haſtned by requeſt, as ſhall be ſaid hereafter.

6. Another diverſity is, when the Obligor or Feoffee is to enfeoffe a ſtranger, as hath been ſaid, and when a ſtranger is to infeoffe the Feoffee or Obligee: As if A. infeoffe B. of Black Acre, upon condition that if C. infeoffe B. of white Acre, A. ſhall re-enter, C. hath time during his life, if B. doth not haſten it by requeſt; and ſo of an Obligation.

7. 14 E. 3. Det. 138. lib. 2. fol. 80. Seignior Cromwels caſe. But in ſome caſes, albeit the condition be collateral, and is to be performed to the Obligee, and no time limited, yet in reſpect of the nature of the thing, the Obligor ſhall not have time during his life to perform it. As if the condition of an Obligation be, to grant an annuity or yearly rent to the Obligee during his life, payable yearly at the feaſt of Eaſter, this annuity or yearly rent muſt be granted before Eaſter, or elſe the Obligee ſhall not have it at that feaſt during his life; & ſic de ſimilibus; and ſo was it reſolved by the Judges (*) of the Common Pleas in the argument of Andrews caſe, which I my ſelf heard.

(*) Vide Dier 14 El. 314.

8. Laſtly, when the Obligor, Feoffor, or Feoffee is to do a ſole act or labour, as to go to Rome,

Rome, Jeruſalem, &c. In ſuch and the like caſes, the Obligor, Feoffor, or Feoffee hath time during his life, and cannot be haſtened by requeſt. And ſo it is if a ſtranger to the Obligation or Feoffment were to do ſuch an act, he hath time to do it any time during his life.

¶ *Si les executors del feoffor tendront, &c.* So as now it appeareth that either the heir of the Feoffor, or his Executors may (when a day is limited) pay the money, and ſo alſo may the Adminiſtrator of the Feoffor do, if the Feoffor die inteſtate. (f) and this may the Ordinary do if there be neither Executor nor Adminiſtrator, as hath been ſaid. Lib.5. fol.98,97. Goodales Caſe. (f) Vide Sect.334.

¶ *Et le feoffee refuſe, les heires del feoffor poient entrer, &c.* Nota, a tender by the Executors or Adminiſtrators, and a refuſal doth give the heir of the Feoffor a title of the entry. And here by this (&c.) is a diverſity implyed, when a tender and refuſal ſhall give a third perſon title of entry.

If a man be bound to A. in an Obligation with Condition to infeoffe B. (who is a meer ſtranger) before a day, the Obligor doth offer to infeoffe B. and he refuſeth, the Obligation is forfeit, for the Obligor hath taken upon him to infeoffe him, and his refuſal cannot ſatisfie the Condition, becauſe no feoffment is made, but if the feoffment had been by the Condition to be made to the Obligee, or to any other for his benefit or behoof, a tender and refuſal ſhall ſave the Bond, becauſe he himſelf upon the matter is the cauſe wherefore the condition could not be performed, and therefore ſhall not give himſelf cauſe of action. But if A. be bound to B. with condition that C. ſhall infeoffe D. In this caſe if C. tender, and D. refuſe, the Obligation is ſaved, for the Obligor himſelf undertaketh to do no act, but that a ſtranger ſhall infeoffe a ſtranger. And it is holden in books, (h) that in this caſe it ſhall be intended, that the feoffment ſhould be made for the benefit of the Obligee. Some to reconcile the Books ſeem to make a difference between an expreſſe refuſal of the ſtranger, and a readineſs of the Obligor at the day and place to make performance, and the abſence of the ſtranger: but that can make no difference. I take it rather to be the error of the Reporter, and the Records themſelves are neceſſary to be ſeen, for the Law herein is as hath been before declared. 33 H.6.16,17. 38 H.6.8. 2 E.4.2.3. 15 E.4.5,6. 22 E.4.13. 32 E.3. barre 264.7 E.3.29. 9 H.7. 17. 10 H.7.14.b. 35 H.8. Dyer 56. lib.5. fol.23. Lambes caſe. (h) 8 E.4.14. 2 E.4. ubi ſupra.

If I infeoffe one in fee upon condition to infeoffe I.S. and his heirs, the Feoffee tenders the feoffment to I. S. and he refuſeth, the Feoffor may re-enter, for by the expreſs intent of the Condition the Feoffee ſhould not have and retain any benefit or eſtate in the land, but as it were an inſtrument to convey over the land. 19 H. 6. 34.

But in that caſe, if the condition were to make a gift in tail to I. S. and he refuſeth it, and a tender and a refuſal is made, there the Feoffor ſhall not re-enter, for that it was intended that the Feoffee ſhould have an eſtate in the Land. And ſo it is if a feoffment be made upon Condition that the Feoffee ſhall grant a Rent charge to a ſtranger, if the Feoffee tender the grant, and he refuſeth, the Feoffor ſhall not re-enter, becauſe the Feoffee was to retain the land, which points are worthy of due obſervation. 2 E.4. Entry conge 25.

Here in the caſe of Littleton, when the Executors make the tender, and the Feoffee refuſeth, albeit the heir be a third perſon, yet is he no ſtranger, but he and the Executors alſo are parties in Law.

¶ *Le perſon del teſtator, &c.* This is to be underſtood concerning goods and chattels either in poſſeſſion or in action, and the Executor doth more aptly repreſent the perſon of the Teſtator then the heir doth the perſon of the Anceſtor. For if a man bindeth himſelf, his Executors are bound though they be not named, but ſo it is not of the heir: Furthermore, here the Adminiſtrators and the Ordinary alſo are implyed, as before hath been ſaid.

Sect. 338.

¶ ET nota, que en touts caſes de condition de payant d'certeine ſumme en groſſe, touchant terres ou tenements, ſi loyal tender ſoit un

AND note, that in all caſes of condition for payment of a certain ſumme in groſſe, touching Lands or Tenements, if lawfull tender be once re-

¶ This is to be underſtood, that he that ought to tender the money is of this diſcharged for ever to make any other tender, but if it were a duty before, though the Feoffor enter by force of the Condition, yet the Debt or Duty remaineth. As if A. borrowеth a hundred Vide Sect. ſequen:

hundred pounds of B. and after mortgageth the land to B. upon condition for payment thereof. If A. tender the money to B. and he refuseth it. A. may enter into the Land, and the land is freed for ever of the Condition, but yet the debt remaineth, and may be recovered by action of Debt. But if A. without any loane, debt or duty preceding, infeoffe B. of land, upon Condition for the payment of a hundred pounds to B. in nature of a gratuity or gift: In that case, if he tender the hundred pound to him according to the Condition, and he refuseth it, B. hath no remedy therefore; and so is our Author in this and his other cases of like nature to be understood.

foits refuse, celuy q̄ duisoit tender l' money est ď ceo assouth, et pleinm̄t discharge per touts temps epres.

fused, he which ought to tender the money is of this quit and fully discharged for ever after.

Sect. 339.

¶ *Piera tiel summe a tiel jour*, &c. Here is implied that this payment ought to be real and not in shew or appearance. For if it be agreed between the Feoffor and the Executors of the Feoffee that the Feoffor shall pay to the Executors but part of the money, and that yet in appearance the whole summe shall be paid, and that the residue shall be repaid, and accordingly at the day and place, the whole summe is paid, and after the residue is repaid, this is no performance of the Condition; for the state shall not be devested out of the heir which is a third person, without a true and effectual payment, and not by a shadow or colour of payment; and the agreement precedent doth guide the payment subsequent.

And by this Section also it appeareth, that the Executors do more represent the person of the Testator, then the heir doth to the Auncestor; for though the Executor be not named, yet the

18 E. 4. fol. 8. Lib. 5. fol. 96. Goodales case. 19 H. 6. 54. 20 E. 3. Account: Pl. 70.

¶ Item si le feoffee en mortgage, devant l' jour de payment que serroit fait a luy fate ses Executors a devie, et son heire enter en le terre come il devoit, &c. il semble en cest cas que le Feoffor doit payer le money al jour assesse al Executors, et nemy al heire Feoffee, pur ceo que le money al commencement trenchast al Feoffee en manner come un duty, et serra entendue que lestate fuit fait pur cause de le prompter de le money per le Feoffee, ou pur cause dauter duty. Et pur t̄ le paym̄t ne serra fait al heire, come il semble. Mes les parols del condition poyent estre tiels, que le payment serra fait al heire, come si le condition fuit, que si le Feoffor paya al Feoffee, ou a ses heires, tiel summe a tiel jour, &c. la apres

Also if the Feoffee in mortgage before the day of payment which should be made to him, makes his Executors and die, and his heir entreth into the land as he ought, &c. It seemeth in this case, that the Feoffor ought to pay the money at the day appointed to the Executors, and not to the heir of the Feoffee, because the money at the beginning trenched to the Feoffee in manner as a duty, and shall be intended that the estate was made by reason of the lending of the money by the Feoffee, or for some other duty; and therefore the payment shall not be made to the heir, as it seemeth; but the words of the Condition may be such, as the payment shall be made to the heir. As if the Condition were, that if the Feoffor pay to the Feoffee or to his heirs such a summe at

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la mort le feoffe, ſil mourſt devant l'jour limit, l'payment doit eſtre fait al heire al jour aſſeſſe, &c.

ſuch a day, &c. there after the death of the feoffee, if he dieth before the day limited the payment ought to be made to the heir at the day appointed, &c.

Executors of the Mortgagee: For Littleton ſaith, that in this caſe the payment ought to be made to the heir. Et hoc caſu deſignatio unius perſonæ eſt excluſio alterius, & expreſſum facit ceſſare tacitum. And the Law ſhall never ſeek out a perſon when the parties themſelves have appointed one: But if the condition be to pay the money to the Feoffee, his heirs or Executors, then the Feoffor hath election to pay it either (m) to the heir or Executors. Vid.li.5.fo.98.Goodales caſe. Dier 2 Eliz.181. 44 E.3.1.b.

(m)12 E.3. Conditi.n 8 & 10.

If a man make a feoffment in fee upon condition that the feoffee ſhould pay to the feoffor, his heirs or aſſignes, 20. pound at ſuch a day; and before the day the feoffor make his Executors and dieth, the feoffee may pay the ſame either to the heir or to the Executors, for they are his Aſſigns in Law to this intent: But if a man make a feoffment in fee upon condition, that if the feoffor pay to the feoffee his heirs or aſſignes 20. pound before ſuch a feaſt and before the feaſt the feoffee maketh his Executors and dyeth, the feoffor ought to pay the money to the heir, and not to the Executors, for the Executors in this caſe are no Aſſignes in Law; and the reaſon of this diverſity is, for that in the firſt caſe the law muſt of neceſſity find out Aſſigns, becauſe there cannot be any Aſſigns in deed, for the feoffor hath but a bare condition, and no eſtate in the land which he can aſſigne over: But in the other caſe the Feoffee hath an eſtate in the land which he may aſſigne over; and where there may be Aſſignes in Deed, the Law ſhall never ſeek out or appoint any aſſigns in Law; And albeit the feoffee made no aſſignement of the eſtate, yet the Executors cannot be aſſignees, becauſe Aſſignees were only intended by the condition to be aſſignees of the eſtate, and ſo it was reſolved, (*) Mich.23 & 34.Eliz. by the two chief Juſtices in the Court of wards, between Randall and Brown, which I obſerved.

27H.8.2. 3&4 Ph.& Ma.140.a
(*) Mich.23 & 24 Eliz. in curia Wardorum, Inter Randal & Brown.

But if the condition be to pay the money to the Feoffee, his heirs or aſſigns and the Feoffee make a feoffment over, it is in the election of the feoffor to pay the money to the firſt Feoffee, or to the ſecond feoffee; and ſo if the firſt feoffee dyeth, the Feoffor may either pay the money to the heir of the firſt feoffee, or to the ſecond feoffee; for the Law will not enforce the Feoffor to take knowledge of the ſecond feoffment, nor of the validity thereof, whether the ſame be effectual or not, but at his pleaſure, and the firſt feoffee and his heirs are expreſſly named in the condition.

Vide 2 Eliz.Dier 181.Pl.Com. Chapmans caſe 186. 288. Viz.Goodales caſe.l.4.f.96.97. 17 Aſſ.Pl.2. Goodales caſe; ubi ſupra.

*Sect.*340.

¶ Item ſur tiel caſe de feoffment in Mortgage, queſtiõ ad eſte demaunde en quel lieu le feoffour eſt tenus de tender les deniers a l'feoffee al jour aſſeſſe, &c. Et aſcuns ont dit, q̃ ſur la terre iſſint tenus en Mortgage pur ceo que l'cõdition eſt dependant ſur le fee. Et ont dit, q̃

ALſo upon ſuch caſe of feoffment in Mortgage, a queſtion hath been demanded, in what place the Feoffor is bound to tender the money to the Feoffee at the day appointed, &c. And ſome have ſaid, upon the land ſo holden in mortgage, becauſe the condition is depending upon the land. And they

¶ *Item ſur tiel caſe de feoffment in mortgage, queſtion ad eſte demande, &c.* Here and in other places, that I may ſay once for all, where Littleton maketh a doubt, and ſetteth down ſeveral opinions and the reaſons, he ever ſetteth down (*) the better opinion and his own laſt, and ſo he doth here. (n) For at this day this doubt is ſettled, having been oftentimes reſolved, that ſuing the money

(*) Vid.Sect.170.302.375.

(n) 8 E.4.4. & 14. 11 H.4.62. 17 Aſſ.p.2.17 E.3.2. 21 H.7. Kelway 74. 16 Eliz. Dier 327. Lib.4.fol.73.in Burroughs caſe; 21 E.4.6.

8 E. 4. 2. 19 R. 2. Det. 158.

(b) 8 E. 4. 3.

money is a summe in grosse and collateral to the title of the land, that the Feoffor must tender the money to the person of the Feoffee according to the latter opinion, and it is not sufficient for him to tender it upon the land; otherwise it is of a rent that issueth out of the land. But if the condition of a Bond, or Feoffement be to deliver twenty Quarters of Wheat, or twenty load of Timber, or such like, the Obligor or Feoffor, is not bound to carry the same about, and seek the Feoffee, but the Obligor or Feoffee, before the day must go to the Feoffee, and know where he will appoint to receive it, and there it must be delivered. and so note a diversity between money and things ponderous, or of great weight. If the condition of a Bond or Feoffment be to make a Feoffment, there it is sufficient (b) for him to tender it upon the land, because the state must pass by livery.

¶ *Deins le roialm Dengleterre.* For if he be out of the Realm of England, he is not bound to seek him or to goe out of the Realm unto him. And for that the Feoffee is the Cause that the Feoffor cannot tender the money, the Feoffor shall enter into the land, as if he had duly tendered it according to the condition.

¶ *Un speciall corporall service al feoffee.* This is a diversity between a Rent issuing out of Land, and a Corporal service issuing out of land; for it sufficeth (as hath been

si le feoffor soit sur le terre la prest a paier la money al feoffee a le jour assesse, et le feoffee adonqz ne soit pas la, adonque le feoffor est assouth, et excuse de payment d'l'mony, pur ceo que nul default est en luy. Mes il semble a aleuns que la ley est contrary, et q̄ default est en luy. Car il est tenus d̄ querer le feoffee sil soit adonqz en aleū auter lieu deins le Royalm de Engleterr̄. Come si home soit oblige en un obligation de 20. li. sur condition endorse sur mesm̄ lobligat̄, que sil paya a celuy a que lobligation est fait a tiel jour 10. li. adonque lobligation de 20. li. perdra la force, et serra tenus pur nul; en cest cas il covient a celuy que fist obligation de quer celuy a que lobligation est fait; sil soit deins Engleterre, e al jour assesse de tender a luy les dits 10. li. autrem̄t il forfeiter a la summe de 20. li. compise deins l'obligation, &c. Et issint il semble en lauter cas, &c. Et coment q̄ aleuns ont dit, que le condition est dependant sur la terre, untore ceo ne prove q̄

have said that if the feoffor be upon the land there ready to pay the money to the feoffee at the day set, and the feoffee be not then there, then the feoffor is quit and excused of the payment of the money, for that no default is in him. But it seemeth to some that the Law is contrary, and that default is in him; for he is bound to seek the feoffee if he be then in any other place within the Realm of *England*. As if a man be bound in an obligation of twenty pound upon condition endorsed upon the same obligation, that if he pay to him to whom the obligation is made at such a day ten pound, then the obligation of twenty pound shall lose his force and be holden for nothing; In this Case it behooveth him that made the obligation to seek him to whom the obligation is made if he be in *England*, and at the day set to tender unto him the said ten pound, otherwise he shall forfeit the summe of twenty pound compriſed within the obligation, &c. And so it seemeth in the other case, &c. And albeit that some have

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le ſeaſans de le condition deſtre perſome, covient eſtre fait ſur la terr, &c. nient plus que ſi le cõdition fuit que le Feoffor ſerra a tiel jour, &c. un eſpeciall corporall ſervice al Feoffee, nient noſmant le luy ou tiel corporal ſervice ſerra fait, en tiel cas le feoffor doit faire tiel corporal ſervice al jour limitte al Feoffee en quelconque lieu Dengleterre que le Feoffee eſt, ſil voile aver advantage de le condition, &c. Iſſint il ſembl' en lauter cas. Et il ſemble a eux q̃ el ſerront pluis properment dit, que leſtate de la terre eſt dependant ſur la condition, que adire, que le condition eſt dependant ſur la terre, &c, Sed quære, &c.

ſaid that the condition is depending upon the land yet this proves not that the making of the condition to be performed, ought to be made upon the Land, &c. no more then if the cõdition were that the Feoffor at ſuch a day ſhall do ſome ſpecial corporal ſervice to the Feoffee not naming the place where ſuch corporal ſervice ſhall be done. In this caſe the feoffor ought to do ſuch corporal ſervice at the day limited to the feoffee in what place ſoever of *England* that the Feoffee be, if he will have advantage of the condition, &c. ſo it ſeemeth in the other caſe. And it ſeems to them, that it ſhal be more properly ſaid that the eſtate of the land is depending upon the condition, then to ſay that the condition is depending upon the land, &c. *Sed quære, &c.*

ſaid) that the rent be tendred upon the Land, out of which it iſſueth. But homage or any other ſpecial corporal ſervice muſt be done to the perſon of the Lord, and the Tenant ought by the Law of convenience to ſeek him to whom the ſervice is to be done in any place within England. 12 E.3 10. 20 H.6.31. 27 E.3.34. 21 Aſſ.13. 7 E.4.4. 21 E.4.17. 20 E. Avowry 113. 45 E.3.9. 46 E.3. Barre 216.

If a man be bound to pay twenty pound at any time during his life, at a place certain, the Obligor cannot tender the money at the place when he will, for then the Obligee ſhould be bound to perpetual attendance; and therefore the Obligor in reſpect of the incertainty of the time, muſt give the Obligee notice that at ſuch a day at the place limited, he will pay the money, and then the Obligee muſt attend there to receive it: for if the Obligor then and there tender the money, he ſhall ſave the penalty of the Bond for ever. Mich. 22 & 23 Eliz. in Banke le Roy, which I my ſelf heard and obſerved. 19 Eliz. Dier 354. Lib. 8. fol. 92. in Frances caſe.

The ſame law it is if a man make a feoffment in fee upon condition, if the feoffor at any time during his life pay to the feoffee twenty pound at ſuch a place certain, that then, &c. In this caſe the Feoffor muſt give notice to the Feoffee when he will pay it; for without ſuch notice, as is aforeſaid, the tender will not be ſufficient. But in both theſe caſes, if at any time the Obligor or Feoffor meet the Obligee or Feoffee at the place, he may tender the money. 18 Eliz. Dier 354.

If A. be bound to B. with condition that C. ſhall infeoffe D. at ſuch a day, C. muſt give notice to D. thereof, and requeſt him to be on the land at the day to receive the feoffment, and in that caſe he is bound to ſeek D. and give him notice.

¶ *De tender*, or Tendre, is a word common both to the Engliſh and French, in Latine Offerre, and in that ſenſe, and with that Latine word it is alwayes uſed in common Law, Vide Sect. 514. the tender of the half mark. And before Sect. 333, 334, 337. 4 E.4.3. & 4.

Sect. 341.

¶ HEre the diuerſity appeareth betweẽ a ſumme in groſs, and a rent iſſuing out of the land, as hath been touched before.

¶ *Uncore il poit eſlier, s. de relinquiſher ſon entry ou de aver un Aſſiſe.*

Here it appeareth, That if the condition be broken for non-payment of the rent, yet if the Feoffor bringeth an Aſſiſe for the rent due at that time, he ſhall never enter for the condition broken, becauſe he affirmeth the rent to have a continuance, and thereby wadeth the condition. And ſo it is if the rent had had a clauſe of diſtreſs annexed unto it, if the Feoffor had diſtrained for the rent for the non-payment whereof the Condition was broken, he ſhould never enter for the condition broken: but he may receive the ſame, & yet enter for the condition broken. But if he accept a rent due at a day after, he ſhall not enter for the condition broken, becauſe hereby affirmeth the leaſe to have a continuance.

14 E. 3. Entre congeable 45. 14 Aſſ. 11. 45 Aſſ. 5. 6 H. 7. 3. 27 E. 3. 73. Pl. Com. 133. 22 H. 6. 37.

¶ MEs ſi feoffment ẽ fee ſoit fait reſervant al feoffor un annual rent & pur default de payment un re-entry, &c. en teſt caſe il ne beſoigne le tenant a tender le rent, quaunt il eſt arere forſque ſur le tre pur ceo que ceo eſt Rent iſſuant hors de la Terre, que eſt Rent ſecke. Car ſi le feoffor ſoit ſeiſie un foits de teſt rent, & puis il vient ſur la terre, &c. & le rent luy ſoit denie, il poit aver Aſſiſe de Novel diſſeiſin: Car coment que il poit entre p cauſe de le condition enfreint, &c. uncore il poit eſlier, S, de relinquiſher ſon entry ou de aver un Aſſiſe, &c. Et iſſint eſt diverſity quant al tẽder de le Rent que eſt iſſuant hors de la Terre, & del tender dauter ſum̃ en groſſe que ne paſſe iſſuant hors daſcun Terre.

BUT if a feoffment in fee be made, reſerving to the feoffor a yearly rent, and for default of payment a re-entry, &c. in this caſe the Tenant needeth not to tender the rent when it is behind, but upon the Land, becauſe this is a Rent iſſuing out of the Land, which is a Rent Seck. For if the Feoffor be ſeiſed once of this Rent, and after he cometh upon the Land, &c. and the Rent is denied him, he may have an Aſſiſe of *Novel diſſeiſin*: for albeit he may enter by reaſon of the condition broken, &c. yet he may chooſe either to relinquiſh his entry, or to have an Aſſiſe, &c. And ſo there is a diverſity as to the tender of a rent which is iſſuing out of the Land, and of the tender of another ſumme in Groſs, which is not iſſuing out of any Land.

Sect. 342.

¶ ET pur ceo il ſerra bone & ſure choſe pur celuy que voet faire tiel feoffement en mortgage, de mitter un eſpecial lieu lou les deniers ſerront payes, & le pluis eſpecial que eſt mis,

AND therefore it will be a good and ſure thing for him that wil make ſuch feoffment in mortgage, to appoint an eſpecial place where the money ſhall be paid, and the more eſpecial that it be put, the

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le melior eſt pur le Feoffor. Sitome A. infeoffe B. aver a luy & a ſes heires, ſur tiel condition, Que ſi A. a paya a B. en le Feaſt de Saint Michael Larchangel prochein a venir, en Eſglíſe cathedral de Pauls en Londres, deins quater heures prochein devant le heure d̄ noone d̄ meſme le Feaſt a le Rood loft de le Rood de le North doore, deins meſme le Eſglíſe, ou al tombe d̄ S. Erkenwald, ou al huis de tiel Chappel, ou a tiel piller, deins meſme Leſglíſe que adonque bien liſt al avantdit A. et a ſes heires dentrer, &c. en tiel caſe il ne beſoigne de querer le Feoffée en auter lieu; ne deſtre en auter lieu, forſque en le lieu compriſe en lendenture, ne deſtre la pluis longe temps, que le temps ſpecifie en meſm̄ lendenture, pur tender ou payer le money a le Feoffée, &c.

better it is for the Feoffor. As if *A.* infeoffe *B.* to have to him and to his heirs, upon ſuch Condition, That if *A.* pay to *B.* on the Feaſt of Saint *Michael* the Arch-Angel next coming, in the Cathedral Church of Saint *Pauls* in *London*, within four hours next before the hour of Noon of the ſame Feaſt, at the Rood loft of the Rood of the North door, within the ſame Church, or at the Tombe of Saint *Erkenwald*, or at the door of ſuch a Chappel, or at ſuch a pillar within the ſame Church, that then it ſhall be lawfull to the aforeſaid *A.* and his heirs to enter, *&c.* In this caſe he needeth not to ſeek the Feoffee in another place, nor to be in any other place, but in the place compriſed in the Indenture; nor to be there longer then the time ſpecified in the ſame Indenture, to tender or pay the money to the Feoffee, *&c.*

¶ HEre is good counſel and advice given, to ſet down in Conveyances every thing in certainty and particularity; for Certainty is the mother of Quietneſs and Repoſe, and Incertainty the cauſe of variance and contentions: and for obtaining of the one, and the avoiding of the other, the beſt mean is, in all aſſurances to take counſel of learned and well experienced men, and not to truſt only, without advice to a Preſident: For as the rule is concerning the ſtate of a mans body, Nullum medicamentum eſt idem omnibus; ſo in the ſtate of a mans Land, Nullum exemplum eſt idem omnibus.

¶ *Al Tombe de Saint Erkenwald*, &c. This Erkenwald was a younger ſon of Anna King of the Eaſt Saxons, and was firſt Abbot of Cherſey in Surrey, which he had founded, and after Biſhop of London, a holy and devout man, and lieth buried in the South Iſle above the Quire in Saint Pauls Church, where the Tombe yet remaineth that Littleton ſpeaketh of in this place: he flouriſhed about the year of our Lord. 160.

Sect. 343.

¶ ITem en tiel caſe lou le lieu de payment eſt limitte, le Feoffee neſt oblige de receiver le payment en nul auter lieu forſque en meſme le lieu iſſint

ALſo in ſuch caſe where the place of payment is limited, the Feoffee is not bound to receive the payment in any other place but in the ſame place ſo limited.

¶ HEreby it appeareth, that the place is but a Circumſtance: And therefore if the Obligee receiveth it at any other place, it is ſufficient, though he be not bound to receive it at any other place.

And so it is if the money be to be paid on such a feast, yet if the money be tendred and received at any time before the day, it is sufficient.

limit. Mes uncore si il receiust le payment en auter lieu, ceo est assets bone, & auxy fort pur le Feoffor, sicome le receite ust este en mesme le lieu illint limit, &c.

but yet if he do receive the payment in another place, this is good enough, and as strong for the Feoffor, as if the receipt had been in the same place so limited, &c.

Sect. 344.

¶ Hereupon are many diversities worthy of observation.

First, there is a diversity, when the Condition is for payment of money, and when for the delivery of a Horse, a Robe, a Ring or the like: for where it is for payment of money, there if the Feoffee or Obligee accept an Horse, &c. in satisfaction, this is good; but if the Condition were for the delivery of a horse or robe there albeit the Obligee or Feoffee accept money or any other thing for the horse or robe, is no performance of the condition. The like Law is, if the Condition be to acknowledge a Recognizance of twenty pound, &c. if the Obligee or Feoffee accept twenty pounds in satisfaction of the Condition, it is not sufficient in Law. (*) but notwithstanding such acceptance, the condition is broken. And so it is of all other collateral conditions, though the Obligee or Feoffee himself accept it.

¶ Item en tiel case de feoffment en mortgage, un l' Feoffor paya al Feoffee un chival, ou banap dargent, ou un annuel dor, ou auter tiel chose en plein satisfaction del money, et lauter ceo receiust nest assets bon & auxy fort sicome il ust receive la summe del money, coment que le chival, ou laut chose ne fuit de vintisme part del value de sum de le money, pur ceo que lauter avoit ceo accept en pleine satisfaction.

Also in the case of feoffment in Mortgage, if the Feoffor payeth to the Feoffee a Horse, or a Cup of Silver, or a Ring of Gold, or any such other thing in full satisfaction of the money, and the other receiveth it, this is good enough, and as strong as if he had received the sum of money, though the Horse or the other thing were not of the twentieth part of the value of the sum of money, because that the other hath accepted it in full satisfaction.

3 H.7.4.b. 9 H.7.16. 11 H.7.20,21. 19 E.4.1.b. 47 E.3.24. 22 E.4.24. 37 H.26. Li.9. fol.78. Peytoes case.

12 H. 4. 23.

(*) Peytoes case ubi supra.

Secondly, In case when the condition is for payment of money, there is a diversity when the money is to be paid to the party, and when to an estranger: For when it is to be paid to an estranger, there if the stranger accept a Horse or any collateral thing in satisfaction of the money, it is no performance of the Condition, because the Condition in that case is strictly to be performed. But if the Condition be, that a stranger shall pay to the Obligee or Feoffee a sum of money, there the Obligee or Feoffee may receive a Horse, &c. in satisfaction.

4 H.7.4. Dier. 35 H.8.5,6. 27 H. 8. 1.

Thirdly, where the Condition is for payment of twenty pounds, the Obligor or Feoffor cannot at the time appointed pay a lesser sum in satisfaction of the whole, because it is apparent that a lesser sum of money cannot be satisfaction of a greater. But if the Obligee or Feoffee do at the day receive part, and thereof make an acquittance under his Seal in full satisfaction of the whole, it is sufficient, by reason the Deed amounteth to an acquittance of the whole. If the Obligor or Lessor pay a lesser sum either before the day, or at another place then is limited by the Condition, and the Obligee or Feoffee receiveth it, this is a good satisfaction.

Lib.5. fo.17. Pinnels case.

26 H.6. tit. barre 37.

Fourthly, Not only things in possession may be given in satisfaction, (whereof Littleton putteth his case) but also if the Obligee or Feoffee accept a Demaine or a Bond in satisfaction of the money, it is a good satisfaction.

30 E.3. 23.

11 R.2. tit. barre 343.

If the Obligor or Feoffor be bound by Condition to pay an hundred Marks at a certain day

day, and at the day the parties do account together; and for that the Feoffe or Obligee did owe 20. pound to the Obligor or Feoffor, that sum is allowed, and the residue of the hundred Marks paid. This is a good satisfaction, and yet the 20. pound was a Those in action, and no payment was made thereof, but by way of retainer or discharge. 37 H.6.26. 46 E.3.33. 34 H.6.17. 12 H.8.2. b.

¶ *En pleine satisfaction.* Nota, In satisfaction, and in full satisfaction, is all one.

Sect. 345.

¶ ITem si home enfeoffa un auter sur condition, que il & ses heires rendront a un estrange home & a ses heires un annual Rent de 20. s. &c. & si il ou ses heires failont de payment de ceo que adonques bien lirroit al feoffor & a ses heires de entrer, ceo est bon condition, & uncore en cest cas coment que tiel annual payment est appelle en lendenture un annual Rent, ceo nest pas proprement Rent. Car sil serroit Rent, il covient estre Rent service, ou Rent charge, ou Rent secke, & il nest ascun de eux. Car si lestrange fuit seisie de ceo, & puis il fuit a luy denie, il navera unque assise de ceo, pur ceo que il nest pas issuant hors dascun Tenements & issint lestrange nad ascun remedie si tiel annual Rent soit aderere en cest cas, mes que le Feoffor ou ses heires poient entrer, &c. uncore si le Feoffor ou ses

ALso if a man infeoffe another upon Condition, that he and his heirs shall render to a stranger and to his heirs a yearly rent of 20. shillings, &c. and if he or his heirs fail of payment thereof, that then it shall be lawfull to the Feoffor and his heirs to enter, this is a good Condition; and yet in this case, albeit such annual payment be called in the Indenture a yearly Rent, this is not properly a Rent. For if it should be a Rent, it must be Rent Service, Rent Charge, or a Rent Secke; and it is not any of these: For if the stranger were seised of this, and after it were denied him, he shall never have an Assise of this, because that it is not issuing out of any Tenements, and so the stranger hath not any remedy if such yearly Rent be behind in this case, but that the Feoffor or his heirs may enter, &c. And yet if the Feoffor or his heirs enter for default of pay-

¶ *Rendront a un estrange home un annual rent, &c.*

This reservation is meerly void (a) for the reasons hereafter in this Section alledged by Littleton, and also for that no estate moveth from the stranger, and that he is not party to the Deed. (a) Lib.8. fol.70,71.

And albeit it be a void reservation, and can be no rent, & the words of the Condition be, that if the feoffee or his heirs fail of payment of it, (that is, of the annual rent) that then, &c. yet it appeareth that the condition is good, and annual Rent shall be taken for an annuall sum of money in gross, and not in the proper signification thereof, viz. to be a Rent issuing out of Land, which is to be observed, that words in a Condition shall be taken out of their proper sense. Ut res magis valeat quam pereat, & so in like cases it is holden (b) in our Books. (b) 6 E.2. entr. cong.55.

But if A. be seised of certain Lands, and A. and B. joyn in a Feoffment in fee reserving a rent to them both and their heirs, and the Feoffee grant that it shall be lawfull for them and their heirs to distrein for the recipere. 8 Ass.34. revertere.

the rent, this is a good grant of a rent to them both, becauſe he is party to the Deed, and the clauſe of diſtreſs is a grant of the rent to A. and B. as it appeareth before in the Chapter of rents. But if B. had been a ſtranger to the Deed, then B. had taken nothing. And upon this diverſity are all the Books (c) which prima facie ſeem to vary, reconciled.

(c) 18 E. 2. Aſſ. 381. 26 H. 8. 2. 13 E. 2. feoffments & faits 108. 31 Aſſ. p. 31.

¶ *Car ſil ſerra rent, il covient eſtre rent ſervice, rent charge, ou rent ſecke, & il neſt nul de eux.* This is a good Logical argument à diviſione, & argumentum à diviſione eſt fortiſſimum in lege. (d) Littleton uſeth this argument elſewhere, where ſee more of this matter.

(d) Vide Sect. 381.

heires entront pur default de payment, adonque tiel rent eſt ale a touts jours. Et iſſint tiel rent neſt forſque un peine aſſeſſe a le tenant & ſes heires, que ſils ne voilent payer ceo ſelonque la forme del Indenture, ils perdront lour terre per lentry del Feoffor ou ſes heires pur default de payment. Et en ceſt cas il ſembl'que le Feoffée & ſes heires doyent querer le eſtranger & heires ſils ſont deins Engleterre, pur ceo que nul lieu eſt limit lou le payment ſerra fait, & pur ceo que tiel rent neſt pas iſſuãt hors dalcun terre, &c.

ment; then ſuch rent is taken away for ever. And ſo ſuch a rent is but as a pain ſet upon the Tenant and his heirs, that if they will not pay this according to the form of the Indenture, they ſhall loſe their land by the entry of the Feoffor or his heirs for default of payment. And in this caſe it ſeemeth that the Feoffee and his heirs ought to ſeek the ſtranger and his heirs if they be within *England*, becauſe there is no place limited where the payment ſhall be made, and for that ſuch rent is not iſſuing out of any land, &c.

¶ *Pur default de payment.* Note here, ſeeing it is but a ſumme in groſs, there needs no demand of rent, for Littleton here ſaith, that the Feoffee ought to ſeek the perſon of the ſtranger to pay him the ſum of money, becauſe it is a ſum in groſs, and not iſſuing out of the Land.

Sect. 346.

¶ *Le feoffor, donor, &c. ou a lour heires.* Hereby it may ſeem that if a man make a Feoffement, Gift, or Leaſe, that (omitting himſelf) he may reſerve a Rent to his heirs: But Littleton is not ſo to be underſtood, his meaning, is, that either the Feoffor, &c. may reſerve the Rent to himſelf only, or to himſelf and his heirs: And yet it is holden (e) in our books, that a man may make a feoffment in fee, reſerving a Rent of forty ſhillings to the feoffor for term of his life, and

(e) 5 E. 3. 27, 28.

ET hic nota deux choſes, Un eſt, que nul rent (que properment eſt dit rent) poit eſtre reſerve ſur alcun feoffement, done, ou leas, forſque tantſolement al feoffor, ou al donor, ou al leſſor, ou a lour heires, & en nul maner il poit eſtre reſerve ſi alcun eſtrãge

AND here note two things, one is, That no rent (which is properly ſaid a Rent) may be reſerved upon any feoffment, gift, or leaſe, but onely to the Feoffor, or to the Donor, or to the Leſſor, or to their heirs; and in no manner it may be reſerved to any ſtrange perſon. But if

perſon.

perſon. Mes ſi deux joyntenants font un leas per fait endent, reſervant a un de eux un certaine annual rent, ceo eſt aſſets bon a luy a que le rent eſt reſerve, pur ceo q̄ il eſt privy a le leaſe & nemy eſtrange a le leas, &c.

two Joyntenants make a Leaſe by Deed indented, reſerving to one of them a certain yearly Rent, this is good enough to him to whom the rent is reſerved, for that he is privy to the Leaſe, and not a ſtranger to the Leaſe, &c.

after his decaſe a pound of Cumine to his heirs, that this is good.

If a man make a Feoffement in fee reſerving a Rent to him or his heirs, it is good (f) to him for term of his life, and void to his heir.

(f) Lib.5. fol.111. Malories caſe.

¶ *Mes ſi deux joyntenants font un leaſe per fait indent, &c.*

This caſe being by Deed indented, is evident, and it hath been touched before; but if that two Joyntenants

5 E.4.4. a. 27 H.8.16. Vide Sect.58.

without a Deed indented make a Leaſe for life, reſerving a Rent to one of them, it ſhall enure to them both in reſpect of the joynt reverſion. And ſo it is of a ſurrender to one of them, it ſhall enure to them both.

If two Joyntenants, the one for life, and the other in fee, joyn in a Leaſe for life, or a gift in tail reſerving a Rent, the Rent ſhall enure to them both; for if the particular eſtate determine, they ſhall be joyntenants again in poſſeſſion. But if Tenant for life, and he in the reverſion joyn in a leaſe for life, or a gift in tail by Deed reſerving a Rent, this ſhall enure to the Tenant for life onely, during his life, and after to him in the reverſion, for every one grants that which he may lawfully grant; and if at the common law they had made a feoffment in fee generally, the feoffee ſhould have holden of the Tenant for life during his life, and after of him in reverſion, and ſoit was holden (g) in the Kings Bench.

Vide Sect. 58.

(g) Mich.36. & 37. El.

Sect. 347.

¶ LE ſecond choſe eſt, que nul entry, ou re-entry (que eſt tout un) poit eſtre reſerve, ne done a aſcun perſon forſque tantſolement al feoffor, ou le donor, ou al leſſor, ou a lour heires: & tiel re-entrie ne poit eſtre grant a un auter perſon. Car ſi home leſſa terre a un auter pur terme de vie per Indenture, rendant al Leſſor, & a ſes heires certain rent, & pur default de payment un re-entry, &c. ſi apres le leſſor per un fait granta le reverſion de la terre a un auter en fee, & le Tenant a terme de vie atturna, &c. ſi le rent a

THE ſecond thing is, that no entry nor re-entry (which is all one) may be reſerved or given to any perſon, but only to the Feoffor, or to the Donor, or to the Leſſor, or to their heirs. And ſuch re-entry cannot be given to any other perſon. For if a man letteth land to another for term of life by indenture, rendring to the Leſſor and to his heirs a certain rent, and for default of payment, a re-entry, &c. If afterward the Leſſor by a Deed granteth the reverſion of the land to another in fee, & the tenant for term of life attorne, &c. if the rent be

¶ *Que nul Entrie, &c.* Here Littleton reciteth one of the Maximes of the Common Law, & the reaſon hereof is, for avoiding of maintenance, ſuppreſſing of right, and ſtirring up of ſuites: and therefore nothing in action, entry, or re-entry, can be granted over; for ſo under colour thereof, pretended titles might be granted to great men, whereby right might be troden down, and the weak oppreſſed, which the Common Law forbiddeth, as men to grant before they be in poſſeſſion.

¶ *Pur default*

fault de payment un re-entrie, &c. Hereupon is to be collected divers diverſities. firſt, between a condition that requireth a re-entry, and a limitation that Ipſo facto determineth the eſtate without any entry. Of this firſt ſort no ſtranger, as Littleton ſaith, ſhall take any advantage, as hath bẽn ſaid. But of limitations it is otherwiſe. As if a man make a Leaſe Quouſque, that is, until I. S. come from Rome, the Leſſor grant the reverſion over to a ſtranger. I. S. comes from Rome, the Grantee ſhall take advantage of it, and enter, becauſe the eſtate by the expreſſe limitation was determined.

Regiſt. 246. Pl. Com. 27. 3 E. 3. Formedon 68. F. N. B. 201. Li. 10. fo. 36. Mary Portingtons caſe.

So it is if a man make a Leaſe to a woman Quamdiu caſta vixerit, or if a man make a Leaſe for life to a widow. Si tam diu in pura viduitate viveret. So it is if a man make a Leaſe for a 100. years, if the Leſſee live ſo long, the Leſſor grants over the reverſion, the Leſſee dies, the Grantee may enter, cauſa qua ſupra.

2. Another diverſity is between a condition annexed to a Freehold, and a condition annexed to a Leaſe for years.

Brooke tit. Condition in Abb. 11 H. 7. Lopinion de Bromley 10 E. 52. 10 Aſſ. Pl. 24. Pl. Com. 136. 11 H. 7. 17. 19 R. 2. Done 10.

For if a man make a gift in tail or a Leaſe for life, upon condition, that if the Donee or Leſſee goeth not to Rome before ſuch a day, the gift or leaſe ſhall ceaſe or be void, the Grantee of the reverſion ſhall never take advantage of this condition, becauſe the eſtate cannot ceaſe before an entry; but if the leaſe had bẽn but for years, there the Grantee ſhould have taken advantage of the like condition, becauſe the leaſe for years, Ipſo facto, by the breach of the condition without any entry, was void; for a Leaſe for years may begin without ceremony, and ſo may end without ceremony: but an eſtate of Freehold cannot begin nor end without ceremony. And of a void thing an eſtranger may take benefit, but not of a voidable eſtate by entry.

Pl. Com. 313, 314. in Scolaſticaes caſe.

¶ *Al feoffor, ou al donor, &c. ou a lour heires, &c.* Here is to be obſerved a diverſity between a reſervation of a Rent and a re-entry, for (as it hath bẽn ſaid) a Rent cannot be reſerved to the heir of the Feoffor, but the heir may take advantage of a condition which the Feoffor could never do. As if I infeoffe another of an acre of ground, upon condition that if mine heir pay to the Feoffee, &c. 20. ſhillings, that he and his heir ſhall re-enter, this condition is good; and if after my deceaſe my heir pay the 20. ſhillings, he ſhall re-enter, for he is privy in blood, and enjoy the land as heir to me.

15 E. 4. 14. 2.

¶ *Forſque tantſolement al Feoffor, &c. ou a lour heires.* Our Author ſpeaketh here of natural perſons, for an example. For if a Biſhop, Archdeacon, Parſon, Prebend, or any other body politike or corporate, Eccleſiaſtical or Temporal, make a leaſe, &c. upon condition, his ſucceſſor may enter for the condition broken, for they are privy in right.

21 H. 7. 18. 2.

And ſo if a man have a leaſe for years, and demiſe or grant the ſame upon condition, &c. and die, his executors or adminiſtrators ſhall enter for the condition broken, for they are privy in right, and repreſent the perſon of the dead.

(y) If

pres ſoit adverere, le grantée de le reverſion poit diſtreiner pur le Rent, pur ceo que le Rent eſt incident a le reverſion, mes il ne poit entrer en la tre, & ouſte le Tenant, ſi come le leſſor puiſſoit, ou ſes heires, ſi le reverſion uſt eſte continue en eux, &c. Et en ceſt caſe lentry eſt tolle a touts temps, car le grantée de le reverſion ne poit entrer, cauſa qua ſupra. Et le Leſſor, ne ſes heires ne poyent entrer; car ſi le Leſſor puiſſoit ent, donques il covient que il ſerroit en ſon primer eſtate, &c. & ceo ne poit eſtre, pur ceo que il ad alien de luy le reverſion.

after behind, the Grantee of a reverſion may diſtrain for the Rent, becauſe that the Rent is incident to the reverſion; but he may not enter into the land, and ouſte the Tenant, as the Leſſor might have done, or his heirs, if the reverſion had been continued in them, &c. And in this caſe the entrie is taken away for ever, for the Grantee of the reverſion cannot enter, *Cauſa qua ſupra.* And the leſſor nor his heirs cannot enter; for if the Leſſor might enter, then he ought to be in his former eſtate, &c. And this may not be, becauſe he hath aliened from him the reverſion.

(y) If Cestuy que use had made a lease for years, &c. upon condition the Feoffees should not enter for the condition broken, for they are privy in estate, but not privy in blood. (y) 27 H. 8. 1.

Another diversity is in case of a lease for years, where the condition is that the lease shall cease or be void, as is aforesaid, and where the condition is, that the Lessor shall re-enter, for there the Grantee as Littleton saith, shall never take benefit of the condition.

And it is to be observed, that where the estate or lease is Ipso facto void by the condition or limitation, no acceptance of the rent after can make it to have a continuance: Otherwise it is of an estate or lease voidable by entry. Pl. Com. Brownings case 136.

Another diversity is between conditions in Deed, whereof sufficient hath been said before, and conditions in Law As if a man make a lease for life, there is a condition in Law annexed unto it; That if the Lessee doth make a greater estate, &c. that then the Lessor may enter. Of this and the like conditions in Law which do give an entry to the Lessor, the Lessor himself and his heirs shall not only take benefit of it, but also his Assignes, and the Lord by Escheat, every one for the condition in Law broken in their own time. Another diversity there is between the judgment of the Common Law, whereof Littleton wrote and the Law at this day by force of the Statute (*) of 32 H. 8. cap. 34. (a) For by the Common Law no Grantee or Assignee of the reversion could (as hath been said) take advantage of a re-entry by force of any Condition. For at the Common Law if a man had made a lease for life reserving a rent, &c. and if the rent be behind a re-entry, and the Lessor grant the reversion over, the Grantee should take no benefit of the Condition for the cause before rehearsed. But now by the said Statute of 32 H. 8. the Grantee may take advantage thereof, and upon demand of the rent, and not payment, he may re-enter. By which act it is provided, that as well every person which shall have any grant of the King of any reversion, &c. of any lands, &c. which pertained to Monasteries, &c. as also all other persons being Grantees or Assignees, &c. to or by any other person or persons, and their heirs, Executors, Successors, and Assignees shall have like advantage against the Lessees, &c. by entry for non-payment of the rent, for doing of waste or other forfeiture, &c. as the said Lessors or Grantors themselves ought or might have had. Upon this act divers resolutions and judgments have been given which are necessary to be known. (*) 32 H. cap. 34. in le preamble. (a) 26 H. 6. tit. ent. con. 49.

1. That the Statute is general, viz. (b) that the Grantee of the reversion of every common person as well as of the King shall take advantage of Conditions. (b) Pl. Com. Hill & Granges case 175, 176; M. 10. & 11 Eliz. 280. Dier ibid.

2. That the Statute doth extend to Grants made by the Successors of the King, albeit the King be only named in the act. 14 Eliz. Dier 309.

3. That where the Statute speaketh of Lessees, that the same doth not extend to gifts in Tail. Winters case.

4. That where the Statute speaks of Grantees and Assignees of the reversion, (d) that an Assignee of part of the state of the reversion may take advantage of the Condition. As if Lessee for life &c. &c. and the reversion is granted for life, &c. Doth Lessee for years, &c. &c. and the reversion is granted for years, the Grantee for years shall take benefit of the Condition in respect of this word (Executors) in the act. (d) Pl. Com. Kidwellies case 69. Vid. Dier Mich. 14. & 15 Eliz. 309. Vid. 7 E. 3. 54. Simile adjudged in Com. Banco in the Lord Diers time. P. 27 El. Mich. 14 & 15 El. Dier 309. adjudged in Winters case.

5. That a Grantee of part of the reversion, shall not (e) take advantage of the Condition, as if the lease be of three acres reserving a rent upon Condition, and the reversion is granted of two acres, the rent shall be apportioned by the act of the parties, but the Condition is destroyed, for that it is entire and against common right. (e) Lib. 5. fo. 54. Knights case. Winters case ubi supra. Knights case ubi supra.

6. That in the Kings case the Condition in that case is not destroyed, but remains still in the King.

7. By act in Law a Condition may be apportioned in the case of a common person, as if a lease for years be made of two acres, one of the nature of Burrough English, the other at the Common Law, and the Lessor having issue two sons dieth, each of them shall enter for the Condition broken, and likewise a Condition shall be apportioned by the act and wrong of the Lessee, as hath been said in the Chapter of Rents. Lib. 4. fol. 120. Dumpers case.

8. If a lease for life be made, reserving a rent upon condition, &c. the Lessor levies a fine of the reversion, he is Grantee or Assignee of the reversion, but without attornment he shall not take advantage of the Condition, for the makers of the Statute intended to have all necessary incidents observed, otherwise it might be mischievous to the Lessee. Resolved in Dukes case, Pasch. 20 Eliz. in Com. Banco. Mallories case lib. 5. 112. b.

9. There is a diversity between a Condition that is compulsory, and a power of Revocation that is voluntary: for a man that hath a power of revocation, may by his own act extinguish his power of revocation in part, as by levying of a fine of part, and yet the power shall remain for the residue, because it is in nature of a limitation and not of a condition; and so it was resolved (b) in the Earl of Shrewsburies case, in the Court of Wards, Pasch. 39 Eliz. Mich. 40. & 41 Eliz. (b) 14 Eliz. Dier 309.

10. If the Lessor bargain and sell the Reversion by deed indented and enrolled, the Bargainee is not in the Per by the Bargainor, and yet he is an Assignee within the Statute.

So

So if the Leſſor grant the reverſion in fee to the uſe of A. and his heirs, A. is a ſufficient Aſſignee within the Statute, becauſe he comes in by the act and limitation of the party, albeit he is in the Poſt, and the words of the Statute be, To or By, and they be Aſſignees to him, although they be not by him: but ſuch as come in meerly by act in Law, as the Lord of the Villain, the Lord by Eſcheat, the Lord that entreth or claimeth for Mortmain, or the like, ſhall not take benefit of this Statute.

Lib. 5. fol. 113. Mallories Caſe.
Lib. 8. fol. 92. Frances Caſe.

11. If the Leſſor in the caſe before bargain and ſell the reverſion by Deed indented and inrolled, or if the Leſſor make a feoffment in fee, and the Leſſee re-enter, the Grantor or Feoffee ſhall not take any advantage of any Condition without making notice to the Leſſee.

And ſo it was reſolved in Winters caſe. Mich. 14 & 15 El. in Com. Banco, and oftentimes ſince. Vide Dyer 309.

12. Albeit the whole words of the Statute be, for non-payment of the rent, or for doing of waſte or other forfeiture, yet the Grantees or Aſſignees ſhall not take benefit of every forfeiture by force of a Condition, but only of ſuch conditions as either are incident to the reverſion, as Rent, or for the benefit of the ſtate, as for not doing of waſte, for keeping the houſes in reparations, for making of Fences, ſcouring of Ditches, for preſerving of Woods, or ſuch like, and not for the payment of any ſum in groſſe, delivery of Corne, Wood, or the like, ſo as other forfeiture ſhall be taken for other forfeitures, like to thoſe examples which were there put, (videlicet) of payment of Rent, and not doing of Waſte; which are for the benefit of the Reverſion.

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¶ *AL Seignior per voy de eſcheat, &c.*

Note, here it appeareth, That the Lord by Eſcheat ſhall diſtrein for the Rent, and yet the Rent was reſerved to the Leſſor and his heirs, but both Aſſignees in Deed, and Aſſignees in Law ſhall have the Rent, becauſe the Rent being reſerved of inheritance to him and his heirs, is incident to the reverſion, and goeth with the ſame. But if the Rent were reſerved to him and his Aſſigns, and the Leſſor aſſigned over the reverſion, and dieth, the Aſſignee ſhall not have the Rent after his deceaſe, becauſe the Rent determined by his death, for that it was not reſerved to him, his heirs and Aſſigns.

19 E. 3. Reſceit 14.

¶ *Mes il ne poit entrer en la terre per force del Condition, &c.*

Hereby it appeareth that at the Common Law neither aſſigns in deed, nor aſſigns in Law could have taken the benefit of either entry or re-entry by force of a condition.

¶ *Pur ceo que il neſt pas heire al Leſſor, &c.*

(f) 21 H. 7. 18. 17 Aſſ. 20. 9 E. 3. Gard. 113. 114. 18 Aſſ. pl. 18. Lib. 7. fol. 7. the Earl of Bedfords caſe.

The Guardian in Chivalry or in Socage ſhall in the right of the heir take benefit of a Condition by entry or re-entry by the Common Law; and ſo it is here implyed.

¶ Item ſi ſoit Seignior & tenant, et le tenant fait un tiel leaſe pur terme de vie, rendant a Leſſor & a les heires tiel annuel rent, & pur default de payment un re-entry, &c. ſi apres le Leſſor morust ſans heire durant la vie le Tenant a terme de vie, per que le reverſion devient al Seignior per voy deſcheat, et puis le rent de le Tenant a terme de vie ſoit adere le Seignior poit diſtreiner l' Tenant pur le Rent arere: mes il ne poit entrer en la terre per force del condition, &c. pur ceo que il neſt pas heire al Leſſor, &c.

Alſo if Lord and Tenant be, and the Tenant make a Leaſe for term of life, rendring to the Leſſor and his heirs ſuch an annual Rent, and for default of payment, a re-entry, &c. if after the Leſſor dyeth without heir during the life of the Tenant for life, whereby the Reverſion cometh to the Lord by way of Eſcheat, and after the rent of the Tenant for life is behind, the Lord may diſtrein the Tenant for the rent behind, but he may not enter into the land by force of the condition, &c. becauſe that he is not heir to the Leſſor, &c.

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¶ Item ſi terre ſoit graunt a un home pur term de deux ans ſur tiel condition, que ſil payeroyt al grantor deins les dits deux ans 40. Markes, adonques il averoit la terre a luy & a ſes heires, &c. en teſt caſe ſi le Grantée enter per force de le Grant ſans aſcun liverie de leiſin fait a luy per le Grantor, & puis il paya al Grantor les 40 Markes deins les deux ans, uncore il nad riens en la terre forſque pur terme des deux ans, pur ceo que nul livery de Seiſin a luy fuit fait al commencemẽt. Car il averoit Franktenement & fée en teſt caſe, pur ceo que il ad performe le condition donque il averoit Franktenement per force del prime graunt, lou nul livery de Seiſin de ceo fuit fait, que ſerront inconvenient, &c. Mes ſi le Grantor uſt fait livery de Seiſin al Grantée per force de la Grant donqꝫ averoyt le Grantée le Franktenement & le fée ſur meſme le condition.

ALſo if Land be granted to a man for term of two years, upon ſuch condition, That if he ſhall pay to the Grantor within the ſaid two yeares forty Marks, then he ſhall have the Land to him and to his heirs, &c. In this caſe if the Grantee enter by force of the Grant, without any livery of Seiſin made unto him by the Grantor, and after he payeth the Grantor the Forty Markes within the two yeares, yet he hath nothing in the Land but for terme of two years, becauſe no livery of Seiſin was made to him at the beginning; for if he ſhould have a freehold and fee in this caſe, becauſe he hath performed the condition, then he ſhould have a freehold by force of the firſt Grant, where no livery of Seiſin was made of this which would be inconvenient, &c. but if the Grantor had made Livery of Seiſin to the Grantee, by force of the grant, then ſhould the Grantee have the freehold and the fee upon the ſame condition.

¶ HEre ſix things are to be obſerved: Firſt, Littleton here putteth an example of a condition precedent. Secondly, That ſuch a Condition which createth an eſtate may be made by Parol without Deed. Thirdly, That Livery of Seiſin in this caſe muſt be made before the Leſſee enter (as Littleton here ſaith at the beginning) for after his entry Livery made to him that is in poſſeſſion is void, as hath been ſaid. Fourthly, That if no Livery of Seiſin be made, that no Fee-ſimple doth paſs, although the money be paid. Fifthly, That it is inconvenient that the Fee-ſimple ſhould paſs in this caſe without livery of Seiſin. Sixthly, That Argumentum ab inconvenienti, is forcible in Law, as often hath been and ſhall be obſerved. See more of this kind of Condition in the ſection next following. Vide Sect. 68.

¶ *Et a ſes heires, &c.* Here (&c.) impleth an eſtate in tail, or a Leaſe for life.

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¶ *Ore il ad fee simple condi-tional, &c.* The like is of an Estate in taile or for life. Many are of opinion against Littleton in this case; and their reason is, because the Fee-simple is to commence upon a condition precedent, and therefore cannot pass untill the condition be performed: And that here Littleton of a Condition precedent doth (before the performance thereof) make it subsequent: and for proof of their opinion they avouch many successions of authorities, that no Fee-simple should pass before the Condition performed. 31 E. 1. tit. Feoffments & Faits 119. A. letteth a Mannor to B. for term of twenty years, and the Deed would, That after the term of 20 years, that B. and his heirs should hold the said Mannor for ever by twelve pounds Rent, A. taketh a wife and dieth before the terme be past, the Wife of A. demands Dower. And there Wayland chiefe Justice saith, That the fee and the franktenement both repose in the person of the Lessor untill the terme be past, for before that the Condition is not performed: for if the Lessor had alienes the land before the end of the term, B. should not recover by a Writ of Assise, and by the death of the Lessor the chiefe Lord should have had the wardship

31 E. 1. tit. Feoffments & Faits 119.

¶ Item si terre soyt grant a un home pur terme de 5. ans sz condition, que sil pay al Grantor deins les deux primer ans, 40. Markes, que adonque il averoit fee ou auterment forsque pur term de les v. ans, & livery de Seisin est fait a luy per force de le grant, ore il ad fée simple conditionall, &c. Et si en ceo case le Grauntée ne paia my al Grantor les 40 Marks deins les primers deux ans, donques immediate apres mesmes les deux ans passes, le fée & le franktenement est, & serra adjudge en le Grantor pur ceo que le Grantor ne poet apres les dits deux ans maintenant enter sur le Grauntée, pur ceo que le Grauntée ad uncore titl' per trois ans daver & occupier la terre per force de ñ l' grant. Et isint pur ceo que le conditiõ del part le Grantée est enfreint, & le Grauntor ne poet ẽtrer, la Ley mittera l' fée & le franktenement en le Grantor. Car si le Grantée en cest case fait wast, donques apres le enfreinder de le condition, &c. & apres les

Also if Land be granted to a man for term of five years, upon condition, that if he pay to the Grantor within the two first years Forty Marks, that then he shall have Fee, or otherwise but for terme of the five years, and livery of Seisin is made to him by force of the Grant, now he hath a Fee simple conditional, &c. And if in this case the Grantee do not pay the Grantor the Forty Markes within the first two years, then immediately after the said two years past, the fee and the freehold is and shall be adjudged in the Grantor, because that the Grantor cannot after the said two years presently enter upon the Grantee, for that the Grantee hath yet title by three years to have and occupie the land by force of the same Grant. And so because that the condition of the part of the Grantee is broken, and the grantor cannot enter, the Law will put the Fee and the Freehold in the Grantor: for if the Grantee in this case makes Waste, then after the breach of the condition, &c. and after the two

deux

deux ans, le grantor avera son briefe de wast. Et ceo est bone proof adonque que le reversion est en luy, &c.

years, the grantor shall have his Writ of Waste. And this is a good proof then, that the reversion is in him, *&c.*

of the heir of the Lessor. and by judgment the wife recovered Dower, for the termor could not have fee, all which be the words of that Book, 12. E. 2. tit. voucher, 265. I. letteth lands to B. for 8. years, and if the Lessor pay not a hundred

12. E. 2. tit. voucher 265

Marks to the Lessee at the end of the term, that then he shall have fee: by the non-payment of the mony, the fee and franktenement accrueth to him, and before the Lessee cannot be impleaded in a Præcipe, neither shall he vouch.

(x) 7. E. 3. 10. I. letteth certain lands to N. for the term of ten years, rendring a hundred shillings by the year to him and his heirs, and granted by deed, that if he held the lands over to him and his heirs, that he should render by the year twenty pounds; the Lessor during the term brought an Action of debte for the rent. And there Herle Chief Justice of the Common Pleas giveth the rule, that during the term the Lessee had but for years, and therefore the Action of debt maintainable.

(x) 7. E. 3. 10. Pl. Com. Sayes case, 272.

(y) 44. E. 3. tit. attaint. 22. and 43. Ass. p. 41. D. and A. infeoffe the two Plaintiffs in the Assise, they let those lands to S. for term of nine years, upon Condition, that if the Plaintiff in the Assise pay a hundred shillings to S. during the term, that S. shall have it but for nine years; and if they pay it not, that S. shall have fee. S. continueth his estate by one year, and after granteth his estate to one H. which H. continueth his estate by two years, and granted the residue of the term to R. and within the term of nine years the Plaintiffs in the Assise pay the hundred shillings to S. R. continueth his possession after the term, and infeoffeth D. which infeoffeth the Lord Furnival, against whom and others without any claim or entry made by the Plaintiffs, after the nine years ended, he brought his Assise, and after adjournment recovered.

(y) 44. E. 3. tit. attaint. 22 43. Ass. p. 41.

(z) 10 E. 3. 39. & 40. R. both let certain lands to I. for term of twelve years, and in surety of his term he maketh a Charter of the fee upon condition, that if he be disturbed within the term, that he cannot hold the lands until the end of the term, that then he shall hold the lands to him and his heirs for ever, and seisin was delivered upon the one Charter and the other. R. within the term plowed and sowed the land, and took the profits against the will of I. and I. upon this disturbance had fee, and recovered in Assise.

(z) 10. E. 3. 39. 40. 10. Ass. 15. tit. Ass. 161. Pl. Co. Brownings case, 135.

6 R. 2 tit. Quid Juris clamat 20. If a Lease be made for a term, upon condition if the Lessee pay a certain sum within the term, that then he shall have fee, if he pay the money he shall have the fee; but if before the day of payment the Lessor levieth a fine to another, the Lessee ought to attorn by protestation, and if he pay the money, the Conusee shall have it, and the Conusee shall have the rent reserved until the day of payment: and if land be leten for term of years, upon condition, that if the Lessee be ousted within the term by the Lessor, that he shall have fee, if he be ousted, he shall have fee by the Condition; and notwithstanding he shall not have any Assise, but he must have possession after the ouster; and of this he shall have an Assise.

6 R. 2. tit. quid juris clamat 20.

And generally the Books (*) are cited that make a diversity between a Condition precedent, and a Condition subsequent.

(*) 15. H. 7. 1, 2. 14. H. 8. 18. 20. 3. H. 6. 6. d.

And lastly, they cite Dyer (a) 10. Eliz. 281. and in Say and Fullers case, Pl. Com. 272 the opinions of Dyer and Brown.

(a) Dyer 10 Eliz. 281. Pl. Com. 272.

Notwithstanding all this, there are those that defend the opinions of Littleton, both by reason and authority. By reason, for that by the rule of Law a livery of seisin must pass a present Freehold to some person, and cannot give a freehold in futuro, as it must do in this case if after livery of seisin made, the Freehold and inheritance should not pass presently, but expect until the condition be performed; and therefore if a lease for years be made to begin at Michaelmas, the remainder over to another in fee, if the Lessor make livery of seisin before Michaelmas, the livery is void, because if it should work at all, it must take effect presently, and cannot expect.

Vide Lit. in the Chapter of Tenants for years,

Secondly, they say that when the Lessor makes livery to the Lessee, it cannot stand with any reason that against his own livery of seisin a Freehold should remain in the Lessor, seeing there is a person able to take it. But if a man by Deed make a lease for years, the remainder to the right heirs of I. S. and the Lessor make livery to the Lessee secundum formam chartæ, this livery is void, because during the life of I. S. his right heir cannot take (for nemo est hæres viventis) and in that case the freehold shall not remain in the Lessor, and expect the death of I. S. during the term; for albeit I. S. dye during the term, yet the remainder is void, because a livery of seisin cannot expect.

And they ſay farther, that ſeing all the Books aforeſaid prove that ſuch a condition is good, and that the livery made to the Leſſee is effectual, by conſequence the Freehold and Inheritance muſt paſs preſently or not at all.

(b) Hill & Granges, Pl.Com. 171.

And it is not rare, ſay they, in our Books, that words ſhall be tranſpoſed and marſhalled ſo as the feoffment or grant may take effect. (b) As if a man in the Moneth of February make a leaſe for years reſerving a yearly rent payable at the feaſt of St. Michael the Archangel, and Annunciation of our Lady, during the terme; the Law (in this caſe of reſervation) ſhall make tranſpoſition of the Feaſts, viz. at the Feaſts of the Annuntiation, and of St. Michael the Archangel, that the rent may be payd yearly during the term.

(c) 10 E.3. Seignior Staffords caſe, lib.8. fol. 74. Pl.Com. Nichols caſe, 487.

And ſo it is (c) in caſe of a grant of an Annuity. And farther they take a diverſity in this caſe between a Leaſe for life, and a Leaſe for yeares: For in this caſe of a Leaſe for life with ſuch a condition to have fee, they agree that the fee ſimple palleth not before the performance of the condition, for that the livery may preſently work upon the freehold: but otherwiſe it is in the caſe of a Leaſe for years. Alſo they take a diverſity between Inheritances that lye in grant, and Inheritances that lye in livery: For they agree that if a man grant an Advowſon for years, upon condition that if the Grantee pay twenty ſhillings, &c. within the term, that then he ſhall have fee, the Grantee ſhall not have fee untill the condition be performed. Et ſic de ſimilibus. But otherwiſe it is where livery of ſeiſin is requiſite; and therefore if the King make ſuch a Leaſe for years, upon ſuch a condition, the fee ſimple ſhall not paſs preſently, becauſe in that caſe no livery is made.

They alſo make ſeveral anſwers to the authorities before cited: For as to the caſe in 31 E.1. they ſay that either the caſe is miſreported, or elſe the Law is againſt the judgement. For the Caſe is but this, that a man make a leaſe of a Mannor to B. for 20 years, and after the 20 years B. ſhall hold the Mannor to him and his heirs by 12 pound rent, and (as it muſt be intended) maketh livery of ſeiſin, in this caſe it is clear (ſay they) that B. hath a fee ſimple Maintenant; for there is no condition precedent in the caſe.

Seignior Staffords caſe, ubi ſupra.

As for the caſe in 12 E.2. the caſe (as it is put in the Book) is that John de Mare made a Charter to John de Burford of Fee ſimple, and the ſame day it was covenanted between them that John de Burford ſhould hold the ſame tenements for eight years, and if he did not pay a hundred Marks at the end of the term, that the land ſhall remain to John de Burford his heirs: In which caſe, ſay they, there is direct repugnancy; for firſt the Charter of the fee ſimple was abſolute, and after the ſame day it was covenanted between them, &c. this covenant being made after the Charter, could neither alter the abſolute Charter, nor upon a Condition precedent give him a Fee ſimple that had a Fee ſimple before.

To all the other Books, viz. 7 E. 3. 10 E. 3. Aſſ. 43 & 6 R. 2. they ſay that being rightly underſtood, they are good Law; for in ſome of thoſe Books, as namely in 10 E.3. Aſſ. &c. it appeareth that there was a Charter made in ſurety of the term, which ſay they, muſt be intended thus, viz. A man maketh a Leaſe for years, the Leſſee enters, and the Leſſor makes a Charter to the Leſſee, and thereby doth grant unto him, that if he pay to the Leſſor a hundred Marks during the term, that then he ſhall have and hold the Lands to him and to his heirs.

Pl.Com. in Nichols caſe, 487.

In this caſe, there was no livery of ſeiſin; but doth enure as an extraordinary grant by increaſing of the ſtate; and in that caſe, without queſtion, the fee ſimple palleth not before the condition performed.

And therefore Littleton warily putteth his caſe of an eſtate made all at one time by one conveyance, and a livery made thereupon.

For Littleton himſelf in the Section before ſaith, That in that caſe without a livery nothing palleth of the Freehold and Inheritance.

(d) 10 E.3.54.

And this diverſity (ſay they) is proved by Books, and thereupon they cite (d) 10 E.3.45. in a Writ of Dower, the tenant vouched a warranty, the vouchee as to part pleaded, that the husband was never ſeiſed of any eſtate whereof ſhe might be endowed, as to the reſidue the Tenant pleaded that he leſſed to the husband in gage, upon Condition that if the Leſſor paid ten Marks at a certain day, that he ſhould re-enter, and if he failed of payment, that the Land ſhould remain to the husband and his heirs, which muſt be intended to be done by one intire act, and pleaded that he paid the money at the day, which is allowed to be a good plea; Ergo, the Fee-ſimple paſſed by the Livery, otherwiſe the plea had amounted that the husband was never ſeiſed, &c. And, ſay they, it cannot be intended, that the Judges ſhould be of one opinion in Trinity Term, and of another opinion in Michaelmas Term in the ſame year; and therefore (they hold) their ſeveral opinions are in reſpect of the ſaid diverſity of the caſes.

(e) 32 E.3.tit.garr.30.

(e) 32 E.3. tit. gar. 30. A tenant by courteſie made a Leaſe for years, and in ſurety of the terme, &c. made a Charter in Fee-ſimple, and made livery according to the Charter, (note a ſpecial mention made of Livery in this caſe) and iſſue being taken in an Aſſiſe whether the Tenant

tenant by the courteſie demiſed in fee upon the ſpecial matter found, it was adjudged that a fee ſimple paſſed, and that the heir might enter for a forfeiture, which ſay they, in caſe of Livery is an expreſs judgment in point agreeing with the opinion of Littleton.

(f) 43 E. 3. 35. in an Action of waſt againſt one in Lands which he held for term of years, Belknap pleaded thus for the Defendant, That the Defendant was ſeiſed in fee and infeoffed the Plaintiff, &c. and after the Plaintiff demiſed the Land back again to the Defendant for years upon condition, that if the Defendant paid certain money, &c. that then the Defendant might retain the Land to him and to his heirs, and if not, the Plaintiff might enter, &c. and pleaded that the term endured, and that the day of payment was not come, and demanded judgment, if the Plaintiff may maintain an Action of Waſte, inaſmuch as the Defendant had now a fee ſimple, and ſhewed forth the Indenture of Leaſe with the condition (which agreeth with Littletons caſe) all being done at one time, and by one Deed, and a Livery intended, and with Littletons opinion alſo. It is true, ſay they, that Cavendiſh of counſel wit) the Plaintiff offered to demur, but never proceeded. (g) Vide 20 Aſſ. pl. 20. (f) 43 E. 3. 35.

Other Authorities they cite, but theſe (as I take it) are the principal, and therefore for avoiding of tediouſneſs, having I fear been too long upon this point, the others I omit. Only this they add, that Littleton had ſeen and conſidered of the ſaid Books, and have ſet down his opinion where livery of ſeiſin is made upon a Conveyance made at one time, as hath been ſaid, that he hath fee ſimple conditional. (g) 20 Aſſ. pl. 20.

Benigne lector utere tuo judicio, nihil enim impedio. Conditio beneficialis quæ ſtatum conſtruit, benigne ſecundum verborum intentionem eſt interpretanda, odioſa autem quæ ſtatum deſtruit ſtricte ſecundum verborum proprietatem accipienda. Lib. 8. fo. 90. Frances Caſe.

A Leaſe is made to a man and a woman for their lives upon condition, that which of them two ſhall firſt marry, that one ſhall have fee; they inter-marry, neither of them ſhall have fee, for the incertainty.

Note, if the condition be to increaſe an eſtate (that is to ſay) to have fee upon payment of money to the Leſſor, or to his heirs at a certain day, before the day the Leſſor is attainted of Treaſon or Felony, and alſo before the day is executed: now is the condition become impoſſible by the act and offence of the Leſſor, and yet the Leſſee ſhall not have fee becauſe a precedent condition to increaſe an eſtate muſt be performed; and if it become impoſſible, no eſtate ſhall riſe.

¶ *Pur ceo que le grantor ne poit entrer, &c.* Regularly when any man will take advantage of a condition, if he may enter he muſt enter; and when he cannot enter he muſt make a claim, and the reaſon is, for that a Freehold and inheritance ſhall not ceaſe without entry or claim; and alſo the Feoffor or Grantor may wave the condition at his pleaſure. Pl. Com. Browning and Beſtons Caſe, 133. b.

Alſo if a man grant an Advowſon to a man and to his heirs upon condition, that if the Grantor, &c. pay twenty pound on ſuch a day, &c. the ſtate of the Grantee ſhall ceaſe or be utterly void. The Grantor payeth the money, yet the ſtate is not reveſted in the Grantor before a claim, and that claim muſt be made at the Church. (d) And ſo it is of a reverſion or remainder of a Rent or Common, or the like, there muſt be a claim before the ſtate be reveſted in the Grantor by force of the condition, and that claim muſt be made upon the Land. Vi. Littletons Cap. Villein. (d) Pl. Com. Brownings Caſe, 133. b.

A fortiori, in caſe of a feoffment which paſſeth by Livery of ſeiſin, there muſt be a re-entry by force of the condition before the ſtate be void. 42 E. 3. 1.

If a man bargaineth and ſelleth land by Deed indented and inrolled, with a Proviſo that if the bargainor pay, &c. that then the ſtate ſhall ceaſe and be void, he payeth the money, the ſtate is not reveſted in the Bargainor before a re-entry; and ſo it is if a bargain and ſale be made of a Reverſion, Remainder, Advowſon, Rent, Common, &c. And ſo it is if lands be deviſed to a man and to his heirs upon condition, that if the Deviſee pay not twenty pound at ſuch a day, that his eſtate ſhall ceaſe and be void, the money is not paid, the ſtate ſhall not be veſted in the heir before an entry. And ſo it is of a Reverſion or remainder, an Advowſon, Rent, Common, or the like. Lib. 2. fol. 50. Sir Hugh Cholmleys Caſe.

But the ſaid rule hath divers exceptions. Firſt, in this preſent caſe of Littleton, for that he can make no entry, he ſhall not be driven to make any claim to the reverſion; for ſeeing by conſtruction of Law the Freehold and Inheritance paſſeth Maintenant out of the Leſſor: by the like conſtruction the Freehold and Inheritance by the default of the Leſſee ſhall be reveſted in the Leſſor without entry or claim. Vide lib. 1. fol. 174. Digs Caſe. 20 E. 4. 18, 19.

2. If I grant a rent charge in fee out of my land upon condition, there if the condition be broken, the rent ſhall be extinct in my land, becauſe I (that am in poſſeſſion of the land) need make no claim upon the land, and therefore the Law ſhall adjudge the Rent void without any claim. Pl. Com. Brownings Caſe, 133. b. 20 E. 4. 19.

3. If a man make a feoffment unto me in fee, upon condition that I ſhall pay unto him 20. pound at a day, &c. before the day I let unto him the land for years, reſerving a Rent, and 20 E. 4. 19. 20 H. 7. 4. b.

after fail of payment. the Feoffee shall retain the land to him and to his heirs, and the rent is determined and exting, for that the Feoffor could not enter, nor need not claim upon the land, for that he himself was in possession, and the condition being collateral, is not suspended by the Lease, otherwise it is of rent reserved.

Lib.1.f74. Digges Case.

4. If a man by his deed in consideration of fatherly love, &c. covenant to stand seised to the use of himself for life, and after his decease to the use of his eldest son in tail, the remainder to his second son in tail, the remainder to his third son in fee; with a Proviso of revocation, &c. the father doth make a revocation according to the Proviso, the whole estate is maintenant revested in him without entry or claim for the cause aforesaid.

¶ *Le grantee ad uncore title pur 3. ans.* By this it appeareth. that albeit the Lessee had Pro tempore a fee simple, yet after that fee simple is divested out of him, and vested in the Lessor, he shall hold the lands for three years by the express limitation of the parties.

Pl.Com. in Fulmerstons Case. 107. b.

If a man make a Lease for forty years, the Lessee afterwards taketh a Lease for twenty years, upon condition that if he doth such an act, that then the Lease for twenty years shall be void, and after the Lessee break the Condition, by force whereof the second Lease is void, notwithstanding the lease for forty years is surrendred, for the Condition is annexed to the lease for twenty years, but the surrender was absolute. So it is if a man make a lease for forty years, and the Lessor grant the reversion to the Lessee upon condition, and after the condition is broken, the term was absolutely surrendred. And the diversity is when the Lessor grants the reversion to the Lessee upon condition: and when the Lessee grants or surrenders his estate to the Lessor: for a condition annexed to a surrender may revest the particular estate, because the surrender is conditional. But when the Lessor grants the reversion to the Lessee upon condition, there the condition is annexed to the reversion, and the surrender absolute.

7 E.4.29. 14 E.4.6. 45 E. 3.

8 E. 2 Ass. 395.

A Gardian in Chivalry took a feoffment of the Infant within age that was in ward, and the Infant brought an Assise, and the Gardian shall be adjudged a disseisor, which proveth that the feoffment as against the Infant was void, and yet by acceptance thereof the interest of the Gardian was surrendred.

50 E. 3. 27.

A man maketh a lease for term of life by Deed, reserving the first seven years a Rent, and if the Lessee will hold the land after the seven years, to pay a rent in money; the Lessor will not hold over, but surrender his term; In this case, in judgment of Law, he had but a term for seven years. And so it is if a man make a lease for life, and if the Lessee within one year pay not twenty shillings, that he shall have but a term for two years, if he pay not the money, the estate for life is determined, and he shall have the land but for two years.

¶ *Ceo est bone proofe adonques que le reversion est en luy, &c.* Here is implyed, that no man can have an action of waste, unless the reversion be in him, and by the Authority of our Author, the reason of a case, and well applyed, is a good proof in Law.

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¶ Mes en tiels cases de feoffment sur condition lou le feoffor poit loyalment entrer p̄ le condition enfreint, &c. la le feoffor nad le franktenement devant son entrie, &c.

BUT in such cases of Feoffment upon condition, where the feoffor may lawfully enter for the condition broken, *&c.* there the feoffor hath not the freehold before his entry, *&c.*

This, upon that which hath been said is evident, and needeth no further explanation.

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3 Mar.134. Dier. 14 Eliz. Dier 311. b. 2 H.4.5. 44 E.3.9. Lib.2.fol.79,80,81. in Seignior Cromwels Case.

¶ QUE le feoffee donera, &c. Here is no time limited, therefore the Feoffee by the Law hath du-

¶ Item si feoffment soit fait sur tiel condition, que l' feoffee donera le terre al feoffor

ALso if a feoffment be made upon such condition that the feoffee shall give the land to

for

foz, & a la feme del feoffoz, a aver & tener a eux, & a les heires de lour deux cozps engendzes, & pur default dtiel iſſue, le remainder al dzoit heires le feoffoz. En ceo cas ſi le baron deby vivant la feme devant aſcun eſtate en le taile fait a eux, &c. donques doit le feoffee per la ley faire eſtate a la feme cy pzes le condition, & auxy cy pzes lentent de le condition que il poit faire, ceſtaſcavoir, de leſſer la terre al feme pur terme de vie ſans impeachment de waſt, le remainder apzes ſon deceaſe a les heires de cozps ſa baron de luy engendzes, & pur default de tiel iſſue, le remainder as dzoit heires le Baron. Et la cauſe pur que le leaſe ſerra en ceſt cas a la feme ſole ſans impeachment de waſt, eſt, pur ceo que le condition eſt, que leſtate ſerra fait al Baron & a ſa feme en taile. Et ſi tiel eſtate uſt eſte fait en le vie le baron, donques apzes le mozt le baron el uſt ewe eſtate ent en le taile: quel eſtate eſt ſans impeachmẽt de waſt. Et iſſint il eſt reaſon, q̃ cy pzes

the feoffor, and to the wife of the Feoffor, to have and to hold to them and to the heirs of their two bodies engendred, and for default of ſuch iſſue, the remainder to the right heirs of the Feoffor. In this caſe if the Husband dieth, living the wife, before any eſtate in tail made unto them, &c. then ought the Feoffee by the Law to make an eſtate to the wife as near the condition, and alſo as near to the intent of the condition as he may make it; That is to ſay, to let the Land to the wife for term of life without impeachment of waſt, the remainder after his deceaſe to the heirs of the body of her Husband and her begotten, and for default of ſuch iſſue the remainder to the right heirs of the Husband. And the cauſe why the leaſe ſhall be in this caſe to the wife alone without impeachment of waſt is, for that the Condition is, that the eſtate ſhall be made to the Husband and to his wife in tail. And if ſuch eſtate had been made in the life of the Husband, then after the death of the Huſband ſhe ſhould have

ring his life, unleſs he be haſtned by the requeſt of the Feoffoz oz the heirs of his body, as Littleton ſaith in the next Section.

¶ *Si le baron devie, &c.* But in this caſe if the feoffee dieth before any Feoffment made, then is the condition broken, becauſe he made not the eſtates, &c. within the time preſcribed by the Law. But if the feoffment be made upon condition that the Feoffee before the feaſt of Saint Michael the Archangel next following give the land to the Feoffoz, and to his wife in tail, ut ſupra, and before the day the Feoffee dieth, the ſtate of the heir of the Feoffee ſhall be abſolute, becauſe a certain time is limited by the mutual agreement of the parties, within which time the condition becometh impoſſible by the Act of God, as hath bẽn ſaid before; and therefore it is neceſſary when a day is limited, to adde to the condition, that the Feoffee oz his heirs do perfozm the condition: but when no time is limited, then the Feoffee at his peril muſt perfozm the condition during his life (though there be no requeſt made) oz elſe the Feoffoz oz his heirs may re-enter.

15 H.7.13. 33 H.6.26,27. 9 Eliz. Dier 262. Pl. Com.436. Lib.2. fo.76. Seigniot Cromwels caſe.

¶ *Fait a eux, &c.* Here the (&c.) implieth according to the Condition with the remainder over.

¶ *Al feoffor & a la feme, &c.* Here it appeareth that albeit the Feme be a Stranger, yet the Feoffee is not bound to make it within convenient time, becauſe the Feoffoz who is privy to the condition is to take

27 E.3. Dower 135. Seignior Cromwels caſe, ubi ſupra.

joyntly with her. And ſo it is if the condition be to enfeoffe the feoffor and an ſtranger, the feoffee hath time during his life unleſſe he be haſtned by requeſt. Otherwiſe it is (as hath been ſaid) where the condition is to enfeoffe a ſtranger or ſtrangers onely.

If a man make a feoffment in fee upon condition that the feoffee ſhall make a gift in tail to the feoffor, the remainder to a ſtranger in fee, there the feoffee hath time during his life, as is aforeſaid, becauſe the feoffor who is party, and privy to the condition, is to take the firſt eſtate: But if the condition were to make a g t in tail to a ſtranger, the remainder to the feoffor in fee, there the feoffee ought to do it in convenient time, for that the ſtranger is not privy to the condition, and he ought to have the profits preſently, as before hath been ſaid.

que home poit faire eſtate al entent de condition, &c. que il ſerroit fait, &c. coment que el ne poit aver eſtate en taile ſi come el puiſſoit aver ſi le done en le taile uſt eſtre fait a ſa baron & a luy en le vie ſa baron.

had an eſtate in tail, which eſtate is without impeachment of waſt. And ſo it is reaſon that as near as a man can make the eſtate to the intent of the condition, &c. that it ſhould be made, &c. albeit ſhe cannot have eſtate in tail, as ſhe might have had if the gift in tail had been made to her husband and to her in the life of her husband, &c.

Seignior Cromwels caſe, ubi ſupra.

¶ *De faire eſtate al feme cy pres le condition, & auxy cy pres lentent del condition que il poit faire, &c.*

A. infeoffs B. upon condition that B. ſhall make an eſtate in frank-marriage to C. with one ſuch as is the daughter of the feoffor; in this caſe he cannot make an eſtate in frank-marriage, becauſe the eſtate muſt move from the feoffee, and the daughter is not of his blood, but yet he muſt make an eſtate to them for their lives, for this is as near the condition as he can. And ſo it is if the condition be, to make to A. (which is a meer lay man) an eſtate in frankalmoign, yet muſt he make an eſtate to him for his life, for the reaſon here yielded by Littleton.

A diverſity is to be underſtood between conditions that are to create an eſtate, and conditions that are to deſtroy an eſtate; for here it appeareth, That a condition that is to create an eſtate, is to be performed by conſtruction of Law, as near the condition as may be, and according to the intent and meaning of the condition, albeit the letter and words of the condition cannot be performed: but otherwiſe it is of a condition that deſtroyeth an eſtate, for that is to be taken ſtrictly, unleſs it be in certain ſpecial caſes: and of this ſomewhat hath been ſaid before in this Chapter.

30 H.8. tit. Condi. Br. 190. V. 33 H.8. tit. Joynt. Br. 62.

As if a man mortgage his land to W. upon condition that if the Mortgagor and I.S. pay 20. ſhillings at ſuch a day to the Mortgagee, that then he ſhall re-enter, the Mortgagor dieth before the day, I.S. pays the money to the Mortgagee, this is a good performance of the condition, and yet the letter of the condition is not performed. But if the Mortgagor had been alive at the day, and he would not pay the money, but refuſed to pay the ſame, and I.S. alone had tendred the money, the Mortgagee might have refuſed it. And if a man make a leaſe to two for years, with a proviſo, If the Leſſees die during the term, the Leſſor ſhall re-enter, one Leſſee alien his part and die, the Leſſee cannot re-enter, but the Aſſigne ſhall enjoy the term ſo long as the ſurvivor liveth, and the reaſon is, becauſe the leaſe by the proviſo is not to ceaſe till both be dead. But in the former caſe, albeit the Mortgagor be dead, yet the Act of God ſhall not diſable I.S. to pay the money, for thereby the Mortgagee receives no prejudice. And ſo it is in that caſe, if I.S. had died before the day, the Mortgagor might have paid it.

Lib. 2. f. 79. 80. Seignior Cromwels caſe. 2 H. 4. 5.

And here is to be obſerved a diverſity when the Feoffee dieth, for then (as hath been ſaid) the condition is broken, and when the feoffor dieth, for then the eſtate is to be made as near the intent of the Condition as may be.

¶ *Al feme pur terme de ſa vie ſans impeachment de waſt.*

Here it appeareth, That this eſtate for life ought to be without impeachment of waſt; and yet if the wife doth accept of any eſtate for life, without this clauſe, without impeachment of waſt, it is good, becauſe the ſtate for life is the ſubſtance of the Grant, and the privilege to be without impeachment of waſt is collateral and onely for the benefit of the wife, and the omiſſion of it onely for the benefit of the heir.

2 H. 4. 5. Seignior Cromwels caſe, uti ſupra.

Alſo if the wife take husband before requeſt made, and then they make requeſt, and the ſtate

is

is made to the husband and wife, during the life of the wife, this is a good performance of the condition, albeit the eſtate be made to the husband and wife, where Littleton ſaith it is to be made to the wife, but it is all one in ſubſtance, ſeeing that the limitation is during the life of the wife.

¶ *Sauns impeachment de Waſt.* Abſque impetitione vaſti, (that is) without any challenge or impeachment of Waſt; and by force hereof the Leſſee may cut down the trees and convert them to his own uſe. Otherwiſe it is if the words were, Sauns impeachment per aſcun action de Waſt, for then the diſcharge extends but to the Action, and not to the trees themſelves, and in that caſe the Leſſor ſhall have them. See in my reports lib.12. fo.83. Lib.9. fo.9. li.2 23.

And it is to be obſerved, that after the deceaſe of the husband, the ſtate is not to be made to the wife and the heirs of her body by her late husband ingendred, and ſo to have an eſtate of Inheritance as ſhe ſhould have had by ſurvivor, if the eſtate had been made according to the condition, but onely an eſtate for life without impeachment of Waſt, &c, for that by the authority of Littleton is not ſo near the intent of the condition, as the caſe that Littleton putteth. But I will ſearch no further into this caſe, but leave it to the learned and judicious Reader.

¶ *Et apres ſon deceaſe a les heires del corps le baron de luy engendres.* Note here, admit that there were two Iſſues in tail, the remainder ſhall preſently veſt onely in the eldeſt, and yet if he dieth without Iſſue, it ſhall per formam doni veſt in the youngeſt, as hath been ſaid in the Chapter of eſtate tail: and ſoit is tacite proved here; for otherwiſe the condition (if there were two Iſſues) could not be performed.

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¶ Item en ceſt caſe ſi le baron & la feme ont iſſue, & deviont devant le done en le taile fait a eux, &c. donques le Feoffee doit faire eſtate al Iſſue & a les heires de corps ſon pere & ſon mere engendres, & pur default de tiel Iſſue le remainder a les droit heires le Baron, &c. Et meſme la Ley eſt en auters caſes ſemblables. Et ſi tiel Feoffee ne voet faire tiel eſtate, &c. quant il eſt reaſonablement requiſe per eux q̄ devoyent aver eſtate per force de le condition, &c. donque poit le Feoffor ou ſes heires entrer.

ALſo in this caſe if the husband and wife have iſſue, and die before the gift in tail made to them, &c. then the Feoffee ought to make an eſtate to the Iſſue, and to the heirs of the body of his father and his mother begotten, and for default of ſuch iſſue, &c. the remainder to the right heirs of the husband, &c. And the ſame Law is in other like caſes: and if ſuch a Feoffee will not take ſuch eſtate, &c. when he is reaſonably required by them which ought to have the ſtate by force of the Condition, &c. then may the Feoffor or his heirs enter.

¶ *Quant il eſt reaſonablement requiſe per eux queux devoyent aver eſtate per force de le condition.* Note, here it appeareth, that the Feoffee hath time during his life to make the eſtate, unleſſe he be reaſonably required by them that are to take the eſtate. This is to be intended of parties or privies, and not of mere ſtrangers; for there (as hath been ſaid) the ſtate muſt be made in convenient time.

And concerning the requeſt it is to be known, that when the requeſt is made, the party or privy muſt requeſt the Feoffee at a time certain to be upon the land, and to make the ſtate according to the condition, for ſeeing no time certain is preſcribed for the making of the ſtate, and it is incertain when the requeſt ſhall be made, ſuch requeſt and notice muſt be made as hath been ſaid before in this Chapter. And of this Section, with the (&c.) there needeth not, upon that which hath been ſaid, any further explication.

Sect.

Sect. 354.

¶ *Que le feoffee re-enfeoffera pluſors homes.* By the refeoffment it is implied, to be made to the Feoffors; for a feoffement over to ſtrangers cannot be ſaid a Re-feoffment, and if the feoffment ſhould be made over to ſtrangers only, then as hath been often ſaid, it muſt be made in convenient time.

¶ *Al Heire celuy que ſurveſquiſt, a aver & tener a luy & a les heires celuy que ſurveſquiſt.* Hereupon queſtions have been made, wherefore the Habendum is not to the heirs of the heir, and for what reaſon it is by Littleton limited to the heirs of the ſurvivor. And the cauſe is, for that if it were made to the heirs of the heir, then ſome perſons by poſſibility ſhould be inheritable to the land which ſhould not have inherited if the eſtate had been made to the Survivor and his heirs, and conſequently the condition broken.

For example, If the ſurvivor took to wife Alice Fairefield, in this caſe if the limitation were to the ſon and his heirs, then if the ſon ſhould die without heirs of his father, the blood of the Fairefields (being the blood of his mother) ſhould inherit. But if the limitation be to the right heirs of the father, then ſhould not the blood of the Fairefields by any poſſibility inherit; for then it is as if the ſtate had been made to the ſurvivor and his heirs: And therefore theſe words (Et a les heires celuy que ſurveſquiſt) which many have thought ſuperfluous, are very material. Note well this kind of fee ſimple, for it is worthy the obſervation: But ſufficient hath been ſaid to open the meaning of Littleton, and therefore I will dive no deeper into this point, but leave it to the further conſideration of the learned Reader.

¶ Item ſi feoffment ſoit fait ſur condition que le feoffee reinfeoffer pluſeurs hões a aver & tener a eux & a lour heires a touts jours, & touts ceux que devoient aver eſtat moront devant aſcun eſtat fait a eux, donque doit le feoffee fair eſtate al heir celuy que ſurveſquiſt de eux, a aver & tener a luy & a les heires celuy que ſurveſquiſt.

Alſo if a feoffment be made upon condition, that if the Feoffee ſhall re-enfeoffe many men, to have and to hold to them and to their heirs for ever, and all they which ought to have eſtate die before any eſtate made to them, then ought the Feoffee to make eſtate to the heir of him which ſurvives of them, to have and to hold to him and to the heirs of him which ſurviveth.

Vide Sect. 4.

Sect. 355.

¶ Littleton having ſpoken of defaults of performance, or expreſs breaches of conditions, ſpeaketh now in what caſes the feoffee in judgment of Law doth diſable himſelfe to performe the Condition; And of diſabilities ſome be by act of the party, and ſome by act in Law.

¶ *Ou a doner en taile a un auter*, &c. Here is implied an eſtate for life, or for years, &c.

¶ Item ſi feoffment ſoit fait ſur condition, denfeoffer un auter, ou de doner en taile a un auter, &c. ſi le feoffee devant le performance del condition enfeoffa un eſtranger, ou fait un leaſe pur term de vie, donques poet le feoffor

Alſo if a Feoffement be made upon condition, To enfeoffe another, or to make a gift in tail to another, &c. if the Feoffee before the performance of the Condition enfeoffe a ſtranger, or make a Leaſe for life, then for

for et ſes heires entrer, &c. pur ceo q̄ il ad luy meſm̄ diſable de perform̄er le condition, entant que il ad fait eſtate a un auter, &c.

may the Feoffor and his heirs enter, &c. becauſe he hath diſabled himſelf to perform the condition, inaſmuch as he hath made an eſtate to another, &c.

¶ *Enfeoffe un Eſtranger ou fait un Leaſe pur terme de vie.* This is a diſability by the act of the party, for herein the Feoffor hath diſabled himſelf to make the feoffment or other eſtate according to the Condition. And to ſpeak once for all, the

13 H. 7. 23. b. 32 E. 3. barre 264. 21 Aſſ. 28. 38 Aſſ. pl. 7.

Feoffor is diſabled when he cannot convey the land over according to the Condition, in the ſame plight, quality and freedome as the land was conveyed to him; for ſo the Law requireth the ſame, as ſhall manifeſtly appear hereafter. And here where our Author ſpeaketh of a feoffment, he includeth an eſtate tail as well as the fee ſimple.

Sect. 356.

¶ EN meſme le manner eſt, ſi le feoffee devant le condition perform leſſa meſme la terre a un eſtranger pur terme des ans, en teſt caſe le Feoffor & ſes heires poyent entrer, &c. pur ceo que le feoffee ad luy diſable de faire eſtate de les tenements accordant a ceo que eſtoit en les tenements, quant eſtate ent fuit fait a luy. Car ſi il voile faire eſtate de les tenemts accordant a le condition, &c. donques poit le leſſee p̄ terme dans entrer & ouſte meſme celuy a que leſtate eſt fait, &c. et occupier ceo durant ſon terme.

IN the ſame manner it is if the Feoffee before the Condition performed letteth the ſame land to a ſtranger for term of years, in this caſe the Feoffor and his heirs may enter, &c. becauſe the Feoffee hath diſabled him to make an eſtate of the tenements according to that which was in the tenements when the eſtate thereof was made unto him. For if he will make an eſtate of the tenements according to the condition, &c. then may the Leſſee for years enter & ouſt him to whom the eſtate is made, &c. and occupy this during his term.

¶ *Si le feoffee devant le condition perform leſſa meſme la terre a un eſtranger pur terme des ans, &c.* Here the (&c.) implieth a Leaſe to take effect in futuro as well as in præſenti, alſo a Leaſe for one year, or half a year, &c.

The reaſon of this is evidently ſet down before. And again, of diſabilities, ſome be by act in præſenti, whereof Littleton hath put two examples; and ſome in futuro, whereof now he will ſpeak in the next Section.

Sect. 357.

¶ ET Pluſors ont dit que ſi tiel feoffment ſoit fait a un home ſole ſur ſ̄m le condition, et devant q̄ il ad per-

AND many have ſaid, that if ſuch feoffment be made to a ſingle man upon the ſame condition, and before he hath per-

¶ Firſt, here is an example of a diſability both by act in Law, and in futuro; for by marriage the wife is intitled in Law to Dower, after the death of her husband.

Secondly, it (a) appeareth that albeit the wife by the marriage is but intitled to have

(a) 13 H. 7. 23. b. 34 E. 3. Dower 127. M. 27 E. 3. tit. dower 133. 28 Aſſ. Pl. 4. 11 H. 7. 76. lib. 2. fol. 59. b.

have dower, and the eſtate which ſhe is to have in futuro, viz. after the deceaſe of her Husband, yet it is a preſent cauſe of entry. As a leaſe for years to begin at a day to come is a preſent diſability and cauſe of re-entry, for that the Land is not in that freedome and plight, as it was conveyed to the Feoffee, and after the ſtate made over according to the Condition, the Land ſhall be charged therewith.

Julius Winningtons Caſe, lib. 2. fol. 59, 60.

¶ *En un auter plight.* Plight is an old Engliſh word, and here ſignifieth not only the eſtate, but the habit and quality of the land, and extendeth to rent charges, and to a poſſibility of Dower. Vid. Sect. 289. where Plight is taken for an eſtate or intereſt of and in the land it ſelf, and extendeth not to a Rent Charge out of the land.

¶ *A un home ſole.* For if the Feoffee be married at the time of the feoffment, then the Dower can be no diſability, becauſe the Land ſhall remain in ſuch Plight as it was at the time of the feoffment made unto him.

forme meſme la condition il prent feme, donques le Feoffor et ſes heires maintenant poyent entrer pur ceo que ſil ſeſoit eſtate accordant a la condition, et puis morust, donques la feme ſerra endowe, et poit recover ſa dower per briefe de dower, &c. et iſſint per le priſel del feme les tenements ſont mis en un auter plit que ne fueront al temps del feoffment ſur condition, pur ceo que adonques nul tiel feme fuit dowable, ne ſerroit dowe per la ley, &c.

formed the ſame Condition he taketh wife, then the Feoffor and his Heirs maintenant may enter, becauſe if he hath made an eſtate according to the condition, and after dieth, then the wife ſhall be endowed, and may recover her dower by a Writ of Dower, &c. and ſo by the taking of a wife, the Tenements be put in another plight then they were at the time of the feoffment upon condition, for that then no ſuch Wife was dowable, nor ſhould be endowed by the Law, &c.

¶ *Donques le feoffor & ſes heires maintenant poyent entrer.* Herein it appeareth, that ſeeing that for this title or poſſibility the Feoffor may preſently enter, that albeit the wife happen to die before the husband, ſo as this title or poſſibility took no eſſect, yet the Feoffor may re-enter, for the Feoffee being diſabled at any time, though the ſame continue not, yet the Feoffor may re-enter; for in that caſe, he that is once diſabled is ever diſabled. And herein a diverſity is to be obſerved between a diſability for a time on the part of the Feoffee, and a diſability for a time of the part of the Feoffor. For if a man maketh a feoffment in fee upon condition, that the Feoffee before ſuch a day ſhall re-enfeoffe the Feoffor, the Feoffee taketh wife, and the wife dieth before the day, yet may the Feoffor re-enter.

21 E. 4. 55.

So it is if the Feoffee before the day entreth into Religion, and is profeſſed, and before the day is deraigned, yet the Feoffor may re-enter.

So it is if the Feoffee before the day make a feoffment in fee, and before the day take back an eſtate to him and his heirs, yet the Feoffee may re-enter.

Albeit in theſe caſes a certain day be limited, yet the Feoffee being once diſabled is ever diſabled. And ſo it is when no time is limited by the parties, but the time is appointed by the Law.

But if a man make a feoffment in fee upon Condition, that if the Feoffee or his heirs pay a certain ſum of money before ſuch a day, the Feoffor commit Treaſon, is attainted and executed, now is there a diſability on the part of the Feoffor, for he hath no heir; but if the heir be reſtored before the day, he may perform the Condition, as it was reſolved. (*) Trin. 18 Eliz. in Communi Banco, in Sir Thomas Wiats caſe, which I heard and obſerved. Otherwiſe it is, if ſuch a diſability had grown on the part of the Feoffee: and the reaſon of the diverſity is, for that as Littleton ſaith, maintenant by the diſability of the Feoffee, the Condition is broken, and the Feoffor may re-enter: but ſo it is not by the diſability of the Feoffor or his heirs: for if they perform the Condition within the time, it is ſufficient, for that they may at any time perform the Condition before the day. And ſo it is if the Feoffor

(*) Trin. 18 Eliz. in Communi Banco, in Sir Thomas Wiats Caſe.

offor enter into religion, and before the day is deraigned, he may perform the condition for the cauſe aforeſaid, Et ſic de ſimilibus. The (&c's) in this Section are ſufficiently explained.

Sect. 358.

¶ EN meſme le mãner eſt, ſi le feoffée charge la terre per ſon fait dun rent charge devant le perfozmance del condition, ou ſoit oblige en un eſtatute de le Staple, ou ſtatute Merchant, en tielz caſes le feoffoz & ſes heires poyent entrer &c. Cauſa qua ſupra. Car quecunque que venuſt a les tenemts per le feoffment de le feoffée, eux covient eſtre liables, & eſtre mis en execution per force de le ſtatute Merchant, ou de ſtatute del Staple, Quære. Mes quant le feoffoz ou ſes heires, pur les cauſes avantdits, averont entrer, come ils deboyent, come il ſemble, &c. donques touts tiels choſes que devant tiel entrie puiſſent troubler ou encumber les tenements iſſint dones ſur condition, &c. quant a meſmes l's tenements ſont ouſterment defeats.

¶ IN the ſame manner it is if the Feoffee charge the Land by his Deed with a Rent charge before the performance of the Condition, or be bound in a ſtatute Staple or Statute Merchant, in theſe caſes the Feoffor and his heirs, may enter, &c. *Cauſa qua ſupra.* For whoſoever cometh to the Lands by the feoffement of the Feoffee, they ought to be lyable & put in execution by force of the Statute Merchant, or of the Statute Staple, *Quære.* But when the Feoffor or his heires for the cauſes aforeſaid, ſhall have entred, as it ſeemes they ought, &c. then all ſuch things which before ſuch entry might trouble or incumber the Land ſo given upon condition, &c. as to the ſame Land, are altogether defeated.

¶ *Poyent entrer, &c.* And here it is to be underſtood, that the grant of the rent charge is a preſent diſability of the feoffée: and therefore albeit the grantee doth bring a writ of Annuity, and diſcharge the land of it ab initio, yet the cauſe of entry being once given by the act of the Feoffée, the Feoffor may re-enter. And ſo it is if the grant of the rent charge were made for life, and the Grantee died before any day of payment, yet the feoffor may re-enter. 13 H.7.23.b. 44 E.3.9.b. 26 E.3.73. 20 H.6.34. Julius Winningtons caſe, ubi ſupra.

The like Law is of any judgement given againſt the Feoffée wherein debt or damages are recovered.

¶ *Ou ſoit oblige in un Statute de la ſtaple, &c.* If the feoffée be diſſeiſed, and after bind himſelf in a Statute Staple, or Merchant, or in a Recogniſance, or take Wife, this is no diſability in him, for that during the diſſeiſin, the land is not charged therewith, neither is the lands in the hands of the Diſſeiſor liable thereunto. And in that caſe if the Wife dye, or the Conuſee releaſe the Statute or Recogniſance, and after the diſſeiſee doth enter, there is no diſability at all, becauſe the Land was never charged therewith, and therefore in that caſe the Feoffee may enter and performe the condition in the ſame plight and freedom as it was conveyed unto him. Lib.2.fol.59.60. Julius Winningtons caſe.

And it is to be obſerved, that Littleton putteth theſe caſes as examples: for there are ſome other diſabilities implied that are not here expreſſed. The Lord Clifford did hold his barony and the Sheriffwick of Weſtmerland, of the King by grand Serjeanty in capite, and the King gave him licence that he might infeoffe thereof diverſe Chaplains in fee, ſo that they ſhould give the ſame to the Lord Clifford and the heirs 18 Aſſ.Pl.ultimo 19 E.3.35. Lib.2.fol.80.b. Sir Cromwells caſe.

males

males of his body the remainder over, &c. the Lord Clifford according to the Licence infeoffed the Chaplains, and before they made the reconveyance the Lord Clifford died, and it was adjudged that the heire might enter for the condition broken. For in this case the feoffees were bound by Law to have made the gift in taile to the Lord Clifford himselfe, albeit he never made any request, for otherwise they pursued not the Licence: and if they should make the state to the issue of the Lord Clifford, then might the King seize the Barony, &c. for default of a licence, and that in default of the feoffees. And then the same should not be in the same plight and freedome as it was at the time of the feoffment made upon condition, which is worthy of observation.

If a man grant an Advowson, upon condition, that the grantee shall regrant the same to the Grantor in taile. In this case if the Church become void before the regrant or before any request made by the Grantor, he may take advantage of the condition, because the Advowson is not in the same plight as it was at the time of the grant upon condition. And so was it resolved, (*) Pasch 14. Eliz. in communi Banco, betwen Andrewes and Blunt, which I heard and observed, and which my Lord Dyer hath omitted out of his report of that case: and therefore the Grantee in that case at his peril must regrant it before the Church become voyd, or else he is disabled: otherwise he hath time during his life if he be not hastned by request.

(*) Pasch. 14. Eliz. 311. Dyer.

If the feoffee suffer a recovery by default upon a fained title, before execution sued the Feoffor may re-enter for this disability. Et sic de similibus.

44. E. 3. 9.

Sect. 359.

¶ *Et en le fait est nul condition, &c,* either in deed or in Law.

¶ *Et le feoffment est en tiel force sicome nul tiel fait ust este fait.* And the reason hereof is, for that the estate passeth by the Livery of seisin. And in this case the feoffor upon the delivery of seisin must expresse the state to him and his heires, or to the heires of his body, &c.

18. E. 3. 19. 36. 17. Ass. P. 20. 8. H. 5. 8. 27. H. 6.

If an agreement be made betwen two, that the one shall infeoffe the other upon condition in surety of the payment of certaine money, and after the livery is made to him and his heirs generally, the state is holden by some to be upon condition, inasmuch as the intent of the parties was not changed at any time, but continued at the time of the Livery.

34. Ass. pl. 1.

¶ Item, si un hom fait un fait de feoffmēt a un auter, & en le fait est nul condition, &c. & quāt le feoffor a luy doyle faire livery de seisin per force de mesme le fait, il fait a luy le livery de seisin sur certain condition, & cest cas rien de les tenements passa per le fait, pur ceo que le condition nest compryse deins le fait, & le feoffment est en tiel force sicōe nul tiel fait ust este fait.

ALso if a man make a deed of feoffement to another, and in the deed there is no condition, &c. and when the Feoffor will make livery of seisin unto him by force of the same deed, he makes livery of seisin unto him upon certain condition; in this case nothing of the tenements passeth by the deed, for that the condition is not compriſed within the deed, and the feoffment is in like force as if no such deed had been made.

If a man make a charter of feoffment in fee, and the feoffor deliver seisin for life, the Feoffee shall hold it but for life: but if the livery be expressly for life, and also according to the deed the whole fee simple shall passe, because it hath a reference to the Deed.

13. E. 3. tit. estoppell. 177. 19. E. 3. ibid. 184.

Sect. 360.

¶ *Item si feoffment soit fait,* &c. And

¶ Item si feoffment soit fait sur tiel

ALSO if a feoffment be made con

condition, q̄ le feoffee ne alienera la terr̄ a nullup, ceſt condition eſt voide, pur ceo que quant home eſt enfeoffe de terres ou tenements il ad power de eux alie-ner a aſcun perſon per la ley. Car ſi tiel condition ſerroit bone donque la condition luy ouſteroit de tout le power que la ley luy dona, le quel ſerroit encõter reaſon, & pur ceo tiel condition eſt voyde.

upon this condition, that the feoffee ſhall not alien the land to any, this condition is void; becauſe when a man is enfeoffed of lands or tenements, he hath power to alien them to any perſon by the law: for if ſuch a condition ſhould be good, then the condition ſhould ouſt him of all the power which the Law gives him, which ſhould be againſt reaſon; and therefore ſuch a condition is void.

the like Law is of a deviſe in fee upon condition that the Deviſee ſhall not alien; the condition is void and ſo it is of a grant, releaſe, confirmation or any other conveyance whereby a fee ſimple doth paſſe; For it is abſurd and repugnant to reaſon, that he that hath no poſſibility to have the land revert to him, ſhould reſtrain his feoffee in fee ſimple of all his power to alien. And ſo it is if a man be poſſeſſed of a Leaſe for years, or of a horſe, or of any other cattel real or perſonal, and give or ſell his whole intereſt or property therein, upon condition that the Donee or Vendee ſhall not alien the ſame, the ſame is void, becauſe his whole intereſt and property is out of him, ſo as he hath no poſſibility of a Reverter; and it is againſt Trade and traffique, and bargaining and contracting between man and man: and it is within the reaſon of our Author that it ſhould ouſter him of all power given to him. Iniquum eſt ingenuis hominibus non eſſe liberam rerum ſuarum alienationem; and Rerum ſuarum quilibet eſt moderator & arbiter. And again, Regulariter non valet pactum de re mea non alienanda. But theſe are to be underſtood of conditions annexed to the grant or ſale it ſelf in reſpect of the repugnancy, and not to any other collateral thing, as hereafter ſhall appear. Where our Author putteth his caſe of a Feoffment of Lands, that is put but for an example: for if a man be ſeiſed of a Seigniory, or a Rent, or an Advowſon, or common, or any other inheritance that lyeth in grant, and by his Deed granteth the ſame to a man and to his heirs, upon condition that he ſhall not alien, this condition is void. But ſome have ſaid, that a man may grant a Rent charge newly created out of Lands to a man and to his heirs, upon condition that he ſhall not alien that, that is good, becauſe the rent is of his own creation; but this is againſt the reaſon and opinion of our Author, and againſt the height and purity of a fee ſimple. 14. H. 4. 13. H. 7. 23.

A man before the ſtatute of Quia emptores terrarum might have made a feoffment in fee, and added further, That if he or his heirs did alien without licenſe, that he ſhould pay a fine, then this had been good. And ſo it is ſaid, that then the Lord might have reſtrained the alienation of his Tenant by condition, becauſe the Lord had a poſſibility of reverter, and ſo it is in the Kings caſe at this day, becauſe he may reſerve a tenure to himſelf. 21. H. 7. 8. Lib. 5. 36. Knights caſe.

If A. be ſeiſed of Black-acre, in fee, and B. infeoffeth him of White-acre, upon condition that A. ſhall not alien Black-acre, the condition is good, for the condition is annexed to other land, and ouſteth not the feoffee of his power to alien the land whereof the feoffment is made, and ſo no repugnancy to the ſtate paſſed by the feoffment: and ſo it is of gifts, or ſales of chattels reals or perſonals.

Sect. 361.

¶ Mes ſi l'condition ſoit tiel, que le feoffee ne alienera a un tiel, noſmant ſon noſme, ou

But if the condition be ſuch, that the feoffee ſhall not alien to ſuch a one, naming his name, or to any of his

Pl. Com. 77. a. 8. H. 7. 10. b. 21. E. 3. 47. d.

¶ If a feoffment in fee be made upon condition that the Feoffee ſhall not infeoffe I. S. or any of his heires or iſſues, &c. this is good; for he doth not reſtrain the feoffee of all his power: the reaſon here

here yielded by our Author is worthy of obſervation. And in this caſe if the Feoffee I. N. of intent and purpoſe that he ſhall infeoffe I. S. ſome hold that this is a breach of the Condition, for, quando aliquid prohibetur fieri, ex directo prohibetur & per obliquum.

a alcun ô ſes heires ou de iſſues ô un tiel, &c. ou hujuſmodi, les quix conditiõs ne tollent tout la power dalienation del feoffee, &c. donqz tiel condition eſt bone.

heirs, or of the iſſues of ſuch a one, *&c.* or the like, which conditions do not take away all power of alienation from the feoffee, *&c.* thaen ſuch condition is good.

10. H. 7. 11. Doct. & Stud. 124. 13. H. 7. 23.

If a Feoffment be made, upon condition that the feoffee ſhall not alien in Mortmaine, this is good, becauſe ſuch alienation is prohibited by law: and regularly whatſoever is prohibited by the Law, may be prohibited by condition, be it malum prohibitum, or malum in ſe. In ancient deeds of feoffment in fee there was moſt commonly a clauſe, Quod licitum ſit donatori rem datam dare vel vendere cui voluerit, exceptis viris religioſis & Judæis.

Bracton, lib. 1. fol. 13. 2.

Sect. 362.

¶ NOte here, the double negative in legall conſtruction ſhall not hinder the negative, viz. Sub conditione quod ipſi nec hæredes ſui non alienarent. And therefore the Grammatical conſtruction is not always in judgment of law to be followed.

¶ Item ſi Tenements ſoient dones en le taile ſur tiel condition, que le tenant en le taile ne ſes heires ne alieneront en fee, ne en le taile, ne pur terme dauter vie, forſque pur lour vies demeſne, &c. tiel condition eſt bone. Et la cauſe eſt, par ceo que quant il fiſt tiel alienation & diſcontinuance de le taile, il fait le contrarie a lententle donor, pur que leſtatute de W. 2. cap. 1. fuit fait, per quel eſtatute les eſtates en le taile ſont ordeines.

Alſo if lands be given in tail, upon condition, that the tenant in taile nor his heires ſhall not alien in fee, nor in taile, nor for term of anothers life, but only for their own lives, &c. ſuch Condition is good. And the reaſon is, for that when he maketh ſuch alienation and diſcontinuance of the entail, he doth contrary to the intent of the Donor, for which the Statute of *W.* 2. *cap.* 1. was made, by which Statute the eſtates in taile are ordained.

33. Aſſ. 11. 24. lib. 6. 40. 41. Mildmays caſe. 21. H. 6. 33. 13. H. 7. 23. 21. H. 6. 7. 11. Vid. Sect. 220. Acc.

¶ *Forſque pur lour vies demeſne.* &c. And yet if a man make a gift in taile, upon condition that he ſhall not make a leaſe for his own life, albeit the ſtate be lawfull, yet the condition is good, becauſe the reverſion is in the Donor. As if a man make a leaſe for life or years, upon condition, that they ſhal not grant over their eſtate, or let the land to others; this is good, and yet the grant or Leaſe ſhould be lawfull.

21. H. 6. 33. 13. H. 7. 23. 24. 27. H. 8. 17. 19. 31. H. 8. Dyer 45.

(*) If a man make a gift in taile, upon condition that he ſhall not make a leaſe for three lives, or 21. years, according to the Statute of 33. H. 8. the condition is good, for the ſtatute doth give him power to make ſuch leaſes, which may be reſtrained by condition, and by his own agreement; for this power is not incident to the eſtate, but given to him collaterally by the Act, according to that rule of Law, Quilibet poteſt renunciare juri pro ſe introducto

* Dyer 33. H. 8. f. 48, 49.

¶ *Quant il fiſt tiel alienation & diſcontinuance del ſtate taile.* And therefore if a gift in tail be made upon condition, That the Donee, &c. ſhall not alien, this condition is good to ſome intents, and void to ſome: for as to all thoſe alienations which amount to any diſcontinuance of the ſtate taile, (as Littleton here ſpeaketh) or is againſt the Statute of Weſtminſter 2. the condition is good without queſtion. But as to a common recovery, the condition is void, becauſe this is no diſcontinuance, but a bar; and this common recovery

Vid. Lib. 6. 40, 41. Sir Anth. Milmays caſe.

recovery is not reſtrained by the ſaid Statute of W. 2. And therefore ſuch a condition is repugnant to the tail; for it is to be obſerved, that to this eſtate tail there be diders incidents. Firſt, to be diſpunished of Waſt. Secondly, that the wife of the Donee in Tail ſhall be endowed. Thirdly, That the husband of a Feme Donee after iſſue ſhall be Tenant by the curteſie. Fourthly, That Tenant in tail may ſuffer a common recovery: and therefore if a man make a gift in tail, upon condition to reſtrain him of any of theſe incidents, the condition is repugnant and void in Law. And it is to be obſerved, * that a collateral warranty or lineal with aſſets in reſpect of the recompence, is not reſtrained by the Statute of Donis conditionalibus; no more is the common recovery in reſpect of the intended recompence. And Littleton to the intent to exclude the common recovery, ſaith, Tiel alienation & diſcontinuance, joyning them together. 22 E. 3. 19. 17 El. 343. Dier. (*) 13 H. 7. 24. b.

If a man before the Statute of Donis conditionalibus, had made a gift to a man and to the heirs of his body, upon condition, That after Iſſue he ſhould not have power to ſell, this condition ſhould not have been repugnant and void. Pari ratione, after the Statute a man makes a gift in tail, the Law tacitè gives him power to ſuffer a common recovery; therefore to add a condition, that he ſhall have no power to ſuffer a common recovery, is repugnant and void.

If a man make a feoffment to a Baron and Feme in fee, upon condition, That they ſhall not alien, to ſome intent this is good, and to ſome intent it is void; for to reſtrain an alienation by feoffment, or alienation by deed, it is good. becauſe ſuch an alienation is tortious and voidable: but to reſtrain their alienation by fine is repugnant and void, becauſe it is lawful and unavoidable. 10 H. 7. 11. 13 H. 7. 23. Lib. 6. 41. b. Sir Anth. Mildemay's Caſe, ubi ſupra.

It is ſaid, That if a man infeoffe an Infant in fee, upon condition, That he ſhall not alien, this is good to reſtrain Alienations during his minority, but not after his full age.

It is likewiſe ſaid, That a man by Licenſe may give Land to a Biſhop and his Succeſſors, or to an Abbot and his Succeſſors, and adde a condition to it, that they ſhall not without the conſent of their Chapter or Covent, alien, becauſe it was intended a Mortmain, that is, that it ſhould for ever continue in that Dee or houſe, for that they had it en auter droit, for religious and good uſes. Doctor & Stud. 124.

¶ *Leſtatute W.* 2. *cap.* 1. Hereby it appeareth, That whatſoever is prohibited by the intent of any Act of Parliament, may be prohibited by condition, as hath been ſaid. 10 H. 7. 11. Doct. & Stud. 124. 13 H. 7. 23.

Sect. 363.

¶ Car il eſt prove per les parols compriſe en meſme Leſtatute, que la volũt del donor in tiels caſes ſerroit obſerve, et quant le Tenant en le Taile fait tiel diſcontinuance, il fait le contrary a ceo, &c. Et auxy en eſtates en l'taile dalcun Tenements, quant l'reverſion de fee ſimple, ou remainder in fee ſimple eſt en auters perſons, quant tiel diſcontinuance eſt fait, donques le fee ſimple

FOR it is proved by the words compriſed in the ſame ſtatute, That the will of the Donor in ſuch caſes ſhall be obſerved, and when the Tenant in Tail maketh ſuch diſcontinuance, he doth contrary to that, &c. And alſo in eſtates in Tail of any Tenements, when the Reverſion of the fee ſimple, or the remainder of the fee ſimple is in other perſons, when ſuch diſcontinuance is made, then the fee ſim-

¶ *Quant le reverſion rem' en fee eſt en auters perſons.*

Put the caſe that a man make a gift in Tail to A. the remainder to him and to his heirs, upon condition that he ſhall not alien, as to the ſtate tail the condition is good, for ſuch alienation is prohibited, as hath been ſaid by the ſaid Statute. But as to the fee ſimple, ſome ſay it is repugnant and void, for the reaſon that Littleton hath yielded: and therefore ſome are of opinion, That this is a good Condition, and ſhall defeat the alienation for the eſtate tail only, and leave the fee ſimple in the Alienee; for that the condition did in Law extend only to the eſtate tail, and not to the remainder. 11 H. 7. 6. 13 H. 7. 23, 24. Dier 2. & 3. Phil. & Mar. 127. b.

¶ *Encounter le pro-*

fit de ſes iſſues. Hereby it appeareth, that to reſtrain tenant in tail from alienation againſt the profit of his Iſſues, is good, for that agreeth with the will of the Donor, and the intent of the Statute.

* 46 E. 3. 4. But a gift in tail may be made upon condition, That tenant in tail, &c. may alien for the profit of his iſſues, and that hath been holden to be good, and not reſtrained by the ſaid Statute, and ſeemeth to agree with the reaſon of Littleton, becauſe in that caſe Voluntas Donatoris obſervetur, &c. and it muſt be for the profit of the iſſues.

en le remainder eſt diſcontinue. Et pur ceo que l' Tenant en tail ne fer tiel choſe encounter le profit de ſes iſſues & bon droit, tiel condition eſt bon come eſt avauntdit, &c.

ple in the remainder is diſcontinued. And becauſe Tenant in Tail ſhall do no ſuch thing againſt the profit of his iſſues, and good right, ſuch Condition is good, as is aforeſaid, *&c.*

Sect. 364.

27 H. 7. 11.

¶ A *Lienont, &c. Et auxy ſi touts les Iſſues ſoient morts, &c.* Note, Littleton purpoſely made parcell of the Condition in the Copulative, that the Tenant in Tail ſhould alien, &c. For if a gift in Tail be made to a man and to the heirs of his body, and if he die without heirs of his body, that then the Donor and his Heirs ſhall re-enter, this is a voyd Condition; for when the iſſues fail, the eſtate determineth by the expreſs limitation, and conſequently the adding of the condition to defeat that which is determined by the limitation of the eſtate is void, and in that caſe the wife of the Donee ſhall be endowed, &c. And therefore Littleton to make the Condition good, added an alienation, which amounted to a wrong, and he reſtrained not the alienation only, (for then preſently upon the alienation the Donor, &c. might re-enter, and defeat the eſtate Tail)

¶ Item home poit doner Terres en taile, ſur tiel condition, Que ſi le tenant en le Tail ou ſes heires alienont en fee ou en taile ou pur terme dauter vie, &c. et auxy que ſi touts liſſues heignants del Tenant en le taile ſoyent mortz ſans Iſſue que adonques bien lirroit al donor et a ſes heires de entrer, &c. Et per tiel voy le droit de le taile poit eſtre ſalve apres diſcontinuance al iſſue en le taile, ſi aſcun y ſoit, iſſint que per voy dentre del Donor, ou de ſes heires le taile ne ſer my defeat per tiel condition: Quære hoc. Et uncore ſi le Tenant en l' taile en ceo caſe, ou ſes heires font aſcun diſcontinuance, celuy en le reverſion a ſes heires, apres ceo que le taile eſt determine, pur default de iſſue, &c. poient entrer

ALſo a man may give lands in Tail upon ſuch Condition, that if the Tenant in Tail or his heirs alien in fee or in tail, or for term of another mans life, &c. and alſo that if all the Iſſue coming of the Tenant in Tail be dead without Iſſue, that then it ſhall be lawfull for the Donor and for his heirs to enter, &c. And by this way the right of the tail may be ſaved after diſcontinuance to the iſſue in tail, if there be any: ſo as by way of entry of the Donor or of his heirs, the tail ſhal not be defeated by ſuch condition: *Quære hoc.* And yet if the tenant in tail in this Caſe, or his heirs, make any diſcontinuance, he in the reverſion or his heirs, after that the tail is determined for default of Iſſue, &c. may enter into

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en le terre per force de meſme le condition, & ne ſerront my cohert de ſur briefe de formedon en le reverter.

the Land by force of the ſame Condition, and ſhall not be compelled to ſue a Writ of Formedon in the reverter.

but added, and die without iſſue, to the end that the right of the eſtate in tail might be preſerved and not defeated by the Condition, but might be recovered again by the iſſue in tail in a Formedon.

And Littleton expreſly ſaith, that the Donor and his heirs, after the diſcontinuance, and after that the eſtate tail is determined, may re-enter, which is the intent and true meaning of Littleton in this place. And where it is ſaid in this Section (Quære hoc) this is added by ſome that underſtood not this caſe, and is not in the original.

Note, that in a Condition conſiſting of diders parts in the conjunctive, as here in the caſe of Littleton, both parts muſt be performed, according to the old rule, (a) Si plures conditiones aſcriptæ fuerunt donationi conjunctim, omnibus eſt parendum, & ad veritatem copulativè requiritur quòd utraque pars ſit vera. But otherwiſe it is when the condition is in the diſjunctive, for the ſame Author in that caſe ſaith, Si diviſim cuilibet, vel alteri eorum ſatis eſt obtemperare. Et in diſjunctivis ſufficit alteram partem eſſe veram. What then if the Condition or Limitation be both in the Conjunctive and Diſjunctive: as if a man make a Leaſe to the Huſband and Wife for the term of one and twenty years, if the Huſband and Wife, or any Child betwixt them ſo long ſhall live, and then the wife dieth without iſſue: ſhall the Leaſe determine or continue during the life of the Huſband? And the anſwer is, that it ſhall continue, for the diſjunctive referreth to the whole, and diſjoyneth not onely the latter part, as to the Child, but alſo to the Baron and Feme; ſo as the ſenſe is, if the Baron, Feme, or any Child ſhall ſo long live.

(a) Bracton lib.2. fol.19. vide Pl. Com.76. in Wimbeſhes caſe & fol. 107. in Fulmerſtons caſe. Bracton ubi ſupra.

So it was adjudged in Com. Banco paſch. 30 Eliz. inter Baldwyn & Cook commonly called Trupennies caſe.

(b) And ſo it is, if an uſe be limited to certain perſons, until A. ſhall come from beyond Sea, and attain unto his full age or die, if he doth come from beyond Sea, or attain to his full age, the uſe doth ceaſe.

(b) Hill 35 Eliz. en treſpaſs per le Seignior Mordant vers George Vaux, ſo adjudged in the Kings Bench.

Sect. 365.

¶ Item, home ne poit pleder en aſcun action, que eſtate fuit fait en fee, ou en fee taile, ou pur terme de vie, ſur condition fil ne voucha un record de ceo, ou monſtra un eſcript ſouth ſeale, provant meſme la condition. Car il eſt un common erudition, que home per plee ne defeatera aſcun eſtate de franktenement per force dalcun tiel condition, ſinon que il monſtra le proofe de condition en eſcript, &c. fi-

ALſo a man cannot plead in any action, that an eſtate was made in fee, or in fee tail, or for term of life upon Condition, if he doth not vouch a Record of this, or ſhew a writing under Seal, proving the ſame Condition. For it is a common learning, that a man by plea ſhall not defeat any eſtate of free-hold by force of any ſuch Condition, unleſs he ſheweth the proof of the condition in writing, &c. unleſs it be

¶ EN *aſcun action*, We the action real perſonal, or mixt, if a condition be pleaded to defeat a freehold, it is regularly true, that a Deed muſt be ſhewed forth (a) in Court: And the reaſon why the deed ſhall be ſhewed forth to the Court is, for that to every deed there be two things requiſite; the one that it be ſufficient in Law, and this is called the Legall Part, and therefore the judgment of that belongeth to the Judges of the Law: the other concernes matter of fact, as ſealing and delivery, and this belongs to the Jurors. And becauſe every Deed ought to approve it ſelf, and be proved by others too, it muſt approve it ſelf upon the ſhewing of it forth in Court in two manners.

39 E.4.22. 4 E.4.35. 2. 9 E.4.25. b. 26. 2. 6 H.7.8. b.11 H.7.22. b. 7 H.7.6. 14 H.8.22.b.28 Aſſ.p.1.

(a) Lib.10. fol.92. Doctor Layfields caſe. 7 E.3.57. 25 E.3.41. 41 E.3.10. Ac.

First, as to the compoſition of the words, that it be ſuf-

ſufficient in Law, and that the Court ſhall adjudge.

Secondly, of ancient time if the Deed appeared to be raſed or interlined in places material, the Judges adjudged upon the view, the Deed to be void. But of later time, the Judges have left that to the Jurors to try, whether the raſing or interlining were before the delivery.

45 E.3,21.2. And there is a difference between a rent, and a re-entry; for upon a gift in tail, or a leaſe for life, a rent may be reſerved without Deed, but a Condition with a re-entry cannot be reſerved in thoſe caſes without deed.

non que ceo ſoit en aſcuns eſpecial caſes, &c. Mes de chattels reals ſicome de leas fait a terme dans, ou de graunts de gards fait per gardeins in chivalrie & hujuſmodi, &c. home poit pleder que tiels leaſes ou grants fueront fait ſur condition, &c. ſans monſtre aſcun eſcript de le condition. Iſſint en meſme le maner home poit faire de dones & grants de chattels perſonals & de contracts perſonals, &c.

in ſome ſpecial caſes, &c. But of Chattels reals, as of a Leaſe for years, or of grants of Wards made by Gardians in Chivalry and ſuch like, &c. a man may plead that ſuch Leaſes or grants were made upon condition, &c. without ſhewing any writing of the Condition. So in the ſame manner a man may do of Gifts and Grants of Chattels perſonals, and of Contracts perſonals, &c.

Lib.5. fol.52, 53, &c. Pages caſe. 18.2. cap.4. ¶ *Eſcript deſouth ſeale.* Which Littleton intendeth to be a Deed under Seal.

And well ſaid Littleton, A Deed under Seal, For though the deed be inrolled, yet he cannot plead the inrolment thereof though it be of record. And though it be exemplified under the great Seal, (b) yet muſt he ſhew forth the Deed it ſelf under Seal, as Littleton here ſaith, and not the exemplification. And ſo when Littleton wrote, no Conſtat or Inſpeximus of the Kings Letters Patents were available to be ſhewed forth in Court, but the Letters Patents themſelves under Seal. For both the Conſtat and Inſpeximus are but exemplifications of the inrolment of the Charters, or Letters Patents: and this appeareth by the reſolution of two leveral (c) Parliaments, one holden in the third and fourth year of King Edward the ſixth: and the other in the thirteenth year of Queen Elizabeth. But now by thoſe Statutes the exemplification or Conſtat under the great Seal of the inrolment of any Letters Patents made ſince the fourth day of February, Anno 27. H. 8. or after to be made, ſhall be ſufficient to be pleaded and ſhewed forth in Court, as well againſt the King as any other perſon, by the Patentees themſelves (whereof there was ſome doubt (d) conceived upon the ſaid ſtatute of E. 6.) and by all and every other perſon and perſons claiming by, from, or under them. Which Statutes are general and beneficial, and eſpecially the Act of 13. Eliz. for that extends not onely to Lands, Tenements and Hereditaments, but to every other thing whatſoever, and ought to be favourably conſtrued for advancement of the remedy and right of the ſubject.

(b) Vide 32 H.8. in Patents, Br. 12 H.7.12. b.

(c) 3 & 4 E.6. cap.4. & 13 El. cap.6.

(d) Dier, 1 Eliz.167.

(e) Lib.8. fol.8. in the Princes caſe. Vide Pages caſe, ubi ſupra. The difference between a Conſtat, Inſpeximus, and a Vidimus, you may read (e) at large in Pages caſe. But none of them by Law ought to be had, but onely of the inrolment of record, and not of a Deed or any other writing that is not of Record: and no Deed, &c. can be inrolled, unleſs it be duly and lawfully acknowledged.

33 E.3. gard.162. 20 E.3. darrein preſent.13 35 H.6. tit. monſtrans des faits 118. ¶ *Si non que ſoit en aſcun eſpecial caſes, &c.* Hereby is implied that if a Gardian in Chivalry in the right of the heir entreth for a condition broken, he ſhall plead the ſtate upon condition, without ſhewing of any Deed. becauſe his intereſt is created by the Law. And ſo it is (f) of a Tenant by Statute Merchant or Staple, or Tenant by Elegit.

(f) 20 H.7.5.

5 E.3.37. 11 H.4.83. 35 H.6. tit. monſtrans des faits. 11. b. 7 H. 6.1. 7 H.5.5. 3 H.6.21. 33 H.6.1. 14 H.8.8. Likewiſe Tenant in Dower ſhall plead a Condition, &c. Without ſhewing of the Deed. And the reaſon of theſe and the like caſes, is, for that the Law doth create theſe eſtates, and they come not in by him that entered for the Condition broken, ſo as they might provide for the ſhewing of the Deed, but they come to the Land by authority of Law, and therefore the Law will allow them to plead the Condition without ſhewing of it.

(f) But

(f) But the Lord by eſcheat, albeit his eſtate be created by Law, ſhall not plead a Condition to defeat a freehold without ſhewing of it, becauſe the deed doth belong unto him. (f) 35 H.6. ubi ſupra.

A Tenant by the courteſie ſhall not (g) plead a condition made by his wife, and a re-entry for a condition broken without ſhewing the Deed: for albeit his eſtate be created by Law, yet the Law preſumeth that he had the poſſeſſion of the Deeds and Evidences belonging to his wife. (g) 35 H.6. ubi ſupra.

(h) But Leſſees of years, and all others that claim by any Conveyance from the party, or juſtifie as ſervant by commandement, &c. muſt ſhew the Deed. (h) 14 H.8.8. Pl. Com. 149.

(i) R. brought an Ejectione firmæ againſt E. for ejecting him out of the Mannor of D. which he held for term of years of the demiſe of C. E. the defendant pleaded that B. gave the ſaid mannor to P. and Katherine his wife in tail, who had iſſue, E. the defendant, and after the Donees infeoffed C. of the Mannor, upon condition that he ſhould demiſe the Mannor for years to R. the Plaintiff, the remainder to the husband and to the wife, &c. C. did demiſe the land to R. the Plaintiff, for years, but kept the reverſion to himſelf, wherefore Katharine after the deceaſe of her husband entred upon the Plaintiff, &c. for the condition broken, and died, after whoſe deceaſe the land deſcended to E. the iſſue in tail, &c. now defendant, judgment, if action: exception was taken againſt this plea, becauſe E. the Defendant maintained his entry by force of a condition broken, and ſhewed forth no Deed: and the plea was ruled to be good, becauſe the thing was executed, and therefore he need not ſhew forth the Deed. Nota, the Defendant being iſſue in tail, was remitted to the eſtate tail. (i) 44 E.3.22. See after this chapter Sect.366.

In a Præcipe quod reddat againſt S. who pleaded that R. was ſeiſed, and infeoffed him in Morgage upon condition of payment of certain money at a day, and ſaid that R. paid the money at the day, and entred judgment of the Writ: exception was taken to this plea, for that he ſheweth forth no Deed of the condition; and it was ruled that he need not ſhew forth the Deed, for two cauſes. 1. That he ought not to ſhew any Deed to the Demandant, becauſe the Demandant is a ſtranger. 2. It might be when R. paid the money, and the condition performed, that the Deed was redailed to R. and thereupon the plea was adjudged good, and the Writ abated. 11 E.3. tit. Mon. des faits. 175. 45 E.3.8.

If land be morgaged upon condition, and the Morgagee letteth the lands for years, reſerving a Rent, the condition is performed, the Morgagor re-enters, in an action of debt brought for the Rent, the Leſſee ſhall plead the condition and the re-entry without ſhewing forth any Deed. 45 E.3.8. b. Fitch.

In an aſſiſe the Tenant pleads a feoffment of the Anceſtor of the Plaintiff unto him, the Plaintiff ſaith that the feoffment was upon condition, &c. and that the condition was broken, and pleads a re-entry, and that the Tenant entred and took away the Cheſt in which the Deed was, and yet detaineth the ſame, the Plaintife ſhall not in this caſe be enforced to ſhew the Deed. 10 H.4.9. b. 43 E.3. Vide 10 E.3.41. Simile in dower.

If a woman give lands to a man and his heirs by Deed or without, generally, ſhe may in pleading, averre the ſame to be Cauſa matrimonii prælocuti, albeit ſhe hath nothing in writing to prove the ſame: the reaſon whereof ſee Sect. 330. 12 E.1. Feoffments & Faits 114. F.N.B. 205. b. 13 R.2. Monſtrant des faits 165. 4 E.4.35. &c.

¶ *Mes des chattels reals ſicome leaſe fait a volunt a terme des ans, &c.* This is apparent. 11 H.7.22. b. 6 H.7.8. 9 E.4.25,26. 14 H.8.22.b.

Sect. 366.

¶ Item coment que home en aſcun action ne poit pleder un condition que touche & concerna franktenement ſauns monſtrer eſcript de ceo, come eſt avantdit, uncore home poit eſtre aide ſur tiel condition per verdict de xii. hões

ALſo albeit a man cannot in any action plead a condition which toucheth and concernes a freehold, without ſhewing writing of this, as is aforeſaid, yet a man may be aided upon ſuch a condition by the verdict of twelve men taken at large in an Aſſiſe

¶ *Verdit or verdict de* 12. *homes.* Veredictum quaſi dictum veritatis, as Judicium eſt quaſi juris dictum. Et ſicut ad quæſtionem juris non reſpondent juratores ſed judices; ſic ac quæſtionem facti non reſpondent judices ſed juratores. For Jurors are to try the fact, and the Judges ought to judge according to the Law that riſeth upon Lib.8. fol.155. Lib.9. fol.13. Lib.11. fol.10.

upon the fact, for Ex facto jus oritur.

¶ *Priſe a large.* There be two kinds of verdicts; viz. one general, and another at large or eſpecial. As in an Aſſiſe of Novel diſſeiſin brought by A. againſt B. the Plaintiff makes his plaint, Quod B. diſſeiſivit eum de 20. acris terræ cum pertinentiis, the Tenant pleads, Quod ipſe nullam injuriam ſeu diſſeiſinam præfato A. inde fecit, &c. the Recognitors of the Aſſiſe do find Quod prædict. A. injuſte & ſine judicio diſſeiſivit prædict. B. de prædict. 20. acris terræ cum pertinent, &c. This is a general verdict. The like law it is if they find it negatively. And Littleton here putteth a caſe of a Verdict at large or a ſpecial Verdict; and it is therefore called a ſpecial Verdict or a Verdict at large becauſe they find the ſpecial matter at large, and leave the judgment of Law thereupon to the Court: of which kind of Verdict it is ſaid, (l) Omnis concluſio boni & veri judicii ſequitur ex bonis & veris præmiſſis & dictis Juratorum.

(l) Trin. 33 E 1. Coram. Rege Nort. in Theſaur.

And though Littleton here putteth his caſe of a Verdict at large upon a general iſſue (which in the caſe he puts it was neceſſary for the Tenant to plead) yet when Iſſue is joyned upon ſome ſpecial point, the Jury, as ſhall be ſaid hereafter in this Section, may find the ſpecial matter, if it be doubtful in Law, foraſmuch as doubt may ariſe upon one point upon the ſpeciall Iſſue as upon the general Iſſue. And as a ſpecial Verdict may be found in Common

42 Aſſ. 31. Stanf. pl. cor. 164, 165. 3 E. 3. coron. 284. 286. 287. 44 E. 3. 44. 41 E. 3. Coron. 451.

priſe a large en Aſſiſe de Novel diſſeiſin, ou en aſcun auter action, lou les Juſtices voylent prender le verdict de xii. Jurors a large, Sicome mittomus que home ſeiſie de certain terre en fee, laſſa meſm̃ la terre a un auter pur terme de vie ſans fait, ſur condition de render al Leſſor un certaine rent, & pur default de payment un re-entrie, &c. per force de quel le leſſee eſt ſeiſie come de franktenement, & puis l'rent eſt aderere per que le leſſor enter en la fee & puis le leſſee arraign un Aſſiſe de Novel diſſeiſin, de la terre enders le Leſſor, le quel plead, que il fiſt nul tort, ne nul diſſeiſin, & ſur ceo laſſiſe ſoit priſe, en ceſt caſe les Recognitors del aſſiſe poyent dire & render a les Juſtices lour verdict a large ſur tout le matter, come adire que le defendant fuit ſeiſie de la terre en ſon demeſne come de fee, & iſſint ſeiſie meſme la terre leſſe al plaintife pur terme de ſa vie, rendant al leſſour tiel annuel rent payable a tiel feaſt, &c. ſur tiel condition, que ſi le rent fuit aderere a aſcun tiel feaſt a que of *Novel diſſeiſin*, or in any other action where the Juſtices will take the verdict of 12 Jurors at large. As put the caſe, a man ſeiſed of certain land in fee, letteth the ſame land to another for term of life without deed, upon condition to render to the Leſſor a certain Rent, and for default of payment, a re-entry, &c. by force whereof the leſſee is ſeiſed, as for free-hold, and after the Rent is behind, by which the leſſor entreth into the land, and after the leſſee arraigne an Aſſiſe of *Novel diſſeiſin* of the land againſt the Leſſor, who pleads that he did no wrong nor diſſeiſin, and upon this the Aſſiſe is taken; in this caſe the Recognitors of the Aſſiſe may ſay and render to the Juſtices their verdict at large upon the whole matter, as to ſay that the defendant was ſeiſed of the land in his demeſne as of Fee, and ſo ſeiſed let the ſame land to the Plantiff for term of his life, rendring to the leſſor ſuch a yearly Rent payable at ſuch a feaſt, &c. upon ſuch condition, that if the rent were behind at any ſuch feaſt at which,

doit

doit eſtre pay, donqꝛs bien lirroit al Leſſoꝛ dentrer, &c. per force d̄ quel leaſe le Plaintife fuit ſeiſie en ſon demeſme come de franktenement, & que puis apꝛes le rent fuit aderere a tiel feaſt, &c. per que le Leſſoꝛ entra en le terre ſur le poſſeſſion le Leſſee et pꝛieroit le diſcretion de les Juſtices, ſi ceo ſoit un diſſeiſin fait al Plaintife ou nemy, donque pur ceo que appiert a les Juſtices, que ceo fuit nul diſſeiſin fait al Plaintife, entant que lentrie de le Leſſoꝛ fuit congeable ſur luy; les Juſtices doyent doner judgment q̄ le Plaintife ne pꝛendꝛa riens per ſon bꝛiefe daſſiſe. Et iſſint en tiel cas l' Leſſoꝛ ſerra aide, & uncoꝛe nul eſcripture unques fuit fait del condition. Car tibien que les Juroꝛs poyent aber conuſance de le leaſe, auꝛy bien il poyent aber conuſance de l' condition que fuit declare et rehearſe ſur le leas.

it ought to be paid, then it ſhould be lawfull for the Leſſor to enter, &c. by force of which leaſe the Plaintiff was ſeiſed in his demeſne as of freehold, and that afterwards the Rent was behind at ſuch a feaſt, &c. by which the leſſor entred into the land upon the poſſeſſion of the leſſee, & prayed the diſcretion of the Juſtices, if this be a diſſeiſin done to the Plaintiff or not. Then for that it appeareth to the Juſtices that this was no diſſeiſin to the Plaintiff, inſomuch as the entry of the Leſſor was congeable on him; the Juſtices ought to give judgment that the Plaintiff ſhall not take any thing by his writ of Aſſiſe. And ſo in ſuch caſe the leſſor ſhal be ayded, and yet no writing was ever made of the Condition. For as well as the Jurors may have conuſance of the leaſe, they alſo as well may have conuſance of the Condition which was declared and rehearſed upon the leaſe.

Pleas, ſo may it alſo be found in Pleas of the Crown, or criminal cauſes that concern life or member.

A Verdict finding matter incertainly or ambiguouſly is inſufficient, and no judgment ſhall be given thereupon; as if an Executor plead Pleinment adminiſtre, and iſſue is joyned thereupon, and the Jury find that the Defendant habe goods within his hands to be adminiſtred, but find not to what value, this is uncertain, and therefore inſufficient. 40 E.3.15. 20 E.3. amendment 57. 18 E.3. 49. in Ceſſavit. 30 E.3.23. 7 H. 4. 39.

A Verdict that finds part of the iſſue, and finding nothing for the reſidue, this is inſufficient for the whole, becauſe they habe not tryed the whole iſſue wherewith they are charged. As if an information or intruſion be brought againſt one for intruding into a Meſſuage, and 100 acres of land, upon the generall iſſue the Jury find againſt the Defendant for the land, but faith nothing for the houſe, this is inſufficient for the whole, and ſo was it twice adjudged. (m) But if the Jury gibe a verdict of the whole iſſue, and of more, &c. that which is more is ſurpluſage, and ſhall not (a) ſtay judgment, for Utile per inutile non vitiatur, but neceſſary incidents required by Law, the Jury may find. 17 E.3.47. 18 E.3.48. 22 E.3.1. 18 E.36. 15 E.3. Judgment 58. 2 H.5.3. 7 H.6.5. 7 E.4.24. 28 H.6.10.

(m) Hill. 25 Eliz. in a writ of Error between Brace and the Queen in the Exchequer Chamber Mich. 28 & 29 Eliz. inter Gomerſal & Gomerſal in account in the Bench.

(a) 32 E.3. Ceſſavit. 25.

If the matter and ſubſtance of the iſſue be found, it is ſufficient, as Littleton himſelf ſaith hereafter. Vid. Sect. 484, 485. Vid. Sect. 98. 13 E.3. garr. 26. 15 E.3. Aſſ. 322. 17 E.3.6. 18 Aſſ. 2. 33 Aſſ. 8.

Eſtoppels which bind the intereſt of the Land, as the taking of a Leaſe of a mans own Land by Deed indented, and the like, being ſpecially found by the Jury, the Court ought to judge according to the ſpecial matter; for albeit Eſtoppels regularly muſt be pleaded and relyed upon by an apt concluſion, and the Jury is ſworn ad veritatem dicendam, yet when they find veritatem facti, they purſue well their Oath, and the Court ought to adjudge according to Law. (b) So may the Jury find a warranty being given in evidence, though it be not pleaded, becauſe it bindeth the right, unleſs it be in a Writ of Right, when the Iſſue is joyned upon the meer right.

(b) 1 H.4.6.b. 27 H.8. 22.b. Pl. Com. 515. Lib. 4. fo. 53. Rawlins Caſe & ibid. Pledolts Caſe. Hill. 31 Eliz. between Sutton and Dicons in the Common place, the caſe of the Leaſe for years by Deed indented. 34 E.3. Droit. 29.

(c) After

(c) 7 R. 2. Coron. 108. Plo. Com. Freemans Caſe. 211. 11 H. 4. 2. 20 Aſſ. 12. 16 Aſſ. 16. 22 Aſſ. 23. 5 H. 7. 22. Paſch. 24 H. 8. of the Report of Juſtice Spilman in the Kings Bench. 11 H. 4. 17. 35 H. 6. Examin. 17. 29 H. 8. 37. Dier. 35 H. 8. 55. 4. & 5 Eliz. 218. 14 H. 7. 1. 20 H. 7. 3.

(d) Paſch. 6 E. 6. in the Common place.

(e) 11 H. 4. 16, 17. 3. Mar. Jurors Br. 8. Vide Dier ubi ſupra.

Paſch. 6 E. 6. ubi ſupra.

(f) 24 E. 3. 75.

21 E. 3. 18.

W. 2. cap. 30. 7 H. 4. 11. 8 E. 4. 29. 9 H. 7. 13. 23 H 8. tit. verdict. Br. 85. 11 Eliz. Dier 283. 284. 3 E. 3. Itinere North. 284. 286. 43 Aſſ. 31. 26 H. 8. 5. 44 E. 3. 44. F. tit. Coron. 94. 44 Aſſ. 27. 45 E. 3. 20. Pl. Com. 92. 9 H. 7. 3. Vid. lib. 9. 12. 13. Dowmans caſe. And ſee there many other Authorities. 21 Aſſ. Pl. 21. 10 H. 4. 9.

(m) See more before in this Chapter. Sect. 365.

10 Aſſ. p. 9. 21 Aſſ. 28. 17 Aſſ. 20. 31 Aſſ. 21. 33 Aſſ. 2. 39 E. 3. 28. 44 E. 3. 22. 10 H. 4. 9. 7 H. 5. 5. 9 E. 4. 26. 18 E. 4. 12. 15 E. 4. 16. 17. 21 H. 7. 22.

Lib. 10. fo. 4. caſe de Sewers.

(c) After the verdict recorded the Jury cannot vary from it, but before it be recorded they may vary from the firſt offer of their verdict, and that verdict which is recorded ſhall ſtand: alſo they may vary from a priuy Verdict.

An iſſue found by Verdict ſhall always be intended true until it be reverſed by attaint, and thereupon upon the attaint no Superſedeas is grantable by Law.

If the Jury after their evidence given unto them at the Barre, do at their own charges eat or drink either before or after they be agreed on their Verdict, it is finable, but it ſhall not avoid the Verdict: but if before they be agreed on their Verdict they eat or drink at the charge of the Plaintiff, if the Verdict be given for him, it ſhall avoid the Verdict; but if it be given for the Defendant, it ſhall not avoid it, & ſic è converſo. (d) But if after they be agreed on their Verdict, they eat or drink at the charge of him for whom they do paſs, it ſhall not avoid the Verdict.

(e) If the Plaintiff after evidence given, and the Jury departed from the Barre, or any for him, do deliver any Letter from the Plaintiff to any of the Jury concerning the matter in Iſſue, or any evidence, or any eſcrowle touching the matter in iſſue which was not given in Evidence, it ſhall avoid the Verdict if it be found for the Plaintiff, but not if it be found for the Defendant, & ſic è converſo. But if the Jury carry away any writing unſealed, which was given in evidence in open Court, this ſhall not avoid the Verdict, albeit they ſhould not have carried it with them.

By the Law of England a Jury after their Evidence given upon the Iſſue, ought to be kept together in ſome convenient place without meat, or drink, fire or candle, which ſome Books (f) call an impriſonment, and without ſpeech with any, unleſs it be the Bailiff, and with him only if they be agreed. After they be agreed, they may in cauſes between party and party give a Verdict, and if the Court be riſen, give a priuy Verdict before any of the Judges of the Court, and then they may eat and drink, and the next morning in open Court they may either affirm or alter their priuy Verdict, and that which is given in Court ſhall ſtand. But in criminal caſes of life or member, the Jury can give no priuy Verdict, but they muſt give it openly in Court. And hereby appeareth another diviſion of Verdicts, viz. a publick Verdict openly given in Court, and a priuy Verdict given out of the Court before any of the Judges, as is aforeſaid.

A Jury ſworn and charged in caſe of life or member cannot be diſcharged by the Court or any other, but they ought to give a Verdict. And the King cannot be Non-ſuit, for he is in Judgment of Law ever preſent in Court: but a common perſon may be Non-ſuit.

¶ *En Aſſiſe de Novel diſſeiſin ou en aſcun auter action, &c.* Here it is to be obſerved, That a ſpecial Verdict, or at large may be given in any Action, and upon any iſſue, be the Iſſue general or ſpecial: and albeit there be ſome contrary opinions in our Books, yet the Law is now ſetled in this point.

¶ *Per que le Leſſor entra.* Here it appeareth that the condition is executed by re-entry, yet the Leſſor after his re-entry ſhall not by the opinion of Littleton, plead the Condition without ſhewing the Deed, becauſe he was party and priuy to the Condition: for the parties muſt ſhew forth the Deed, unleſs it be by the act and wrong of his adverſary, as hath been ſaid (m) but an eſtranger which is not priuy to the Condition, nor claimeth under the ſame, as in the caſes above-ſaid appeareth, ſhall not after the Condition is executed in pleading be inforced to ſhew forth the Deed: and by this diverſity all the Books and Authorities in Law which ſeem to be at variance are reconciled. See alſo for this matter the Section next following.

¶ *Les Recognitors del Aſſiſe poient dire, &c.* Here it appeareth that the Jurors may find the fact, albeit the Deed be not ſhewed in evidence, and the rather, for that the Condition upon the Livery (as hath been ſaid) is good albeit there be no Deed at all.

¶ *Et prieront le diſcretion des Juſtices.* That is to ſay, They (having declared the ſpecial matter) pray the diſcretion of the Juſtices, which is as much to ſay, as, That they would diſcern what the Law adjudgeth thereupon, whether for the Demandant or for the Tenant: for as by the authority of Littleton, Diſcretio eſt diſcernere per legem, quid ſit juſtum, that is, to diſcern by the right line of Law, and not by the crooked cord of priuate opinion, which the vulgar call Diſcretion: Si à jure diſcedas, vagus eris, & erunt omnia omnibus incerta: and therefore Commiſſions that authoriſe any to proceed, ſecundum ſanas diſcretiones veſtras, is as much to ſay, as, Secundum Legem & conſuetudinem Angliæ.

¶ *Car cibien come les juror poient aver conuſance, &c.* Hereby it appeareth, That they that have Conuſance of any thing are to have Conuſance alſo of all Incidents and Dependants thereupon, for an Incident is a thing neceſſarily depending upon another.

If

If a deed be made and dated in a forraine Kingdome, of lands within England, yet if Livery and Seisin be made secundum formam chartæ, the land shall passe, for it passeth by the Livery. 1. E. 17. in Grayes case.

Sect. 367.

¶ EN meisme le manner est de Feoffement en Fee, ou done en le Taile sur Condition, coment que nul escripture unque fuit fait de ceo. Et sicome est en Assise, &c. En meisme le manner est en briefe dentr' foundue sur disseisin, & en touts autres actions, ou les Justices voylent prender le verdict a large y là ou tiel verdict a large est fait, la manner del entry entire est mis en lissue &c.

IN the same maner it is of a feoffment in fee, or a Gift in taile, upon condition, although no Writing were ever made of it. And as it is said of a Verdict at large in an Assise, &c. In the same manner it is of a Writ of Entry founded upon a disseisin, and in all other Actions where the Justices will take the Verdict at large, there where such verdict at large is made the manner of the whole entry is put in the Issue, *&c.*

¶ AND it is to be observed, That the Court cannot refuse a speciall verdict, if it be pertinent to the matter put in Issue. See the Section next preceding.

¶ *Verdict a large* It is called a verdict at large, because it findeth the matter at large, and leaves it to the judgment of the Court: or it is called a speciall verdict, because it findeth the special matter, &c. So as hereby it appeareth. That a verdict (as hath been said) is twofold, viz. a Verdict at large, or a special Verdict (which is all one) whereof Littleton here speaketh; and a generall Verdict that is generally found according to the issue, as if the Issue be not guilty, to finde the partie guilty or not guilty generall, & sic de cæteris. There is also a verdict given in open Court, and a privie Verdict given out of Court, before any of the Judges of the Court, so called, because it ought to be kept secret and privy from each of the parties, before it be affirmed in Court. See the section next following. See the next preceding section.

*Sect.*368.

¶ ITem en tiel case lou Lenquest poit dire lour verdict a large, sils voilent prēs sur eux le Conusance de la ley sur le matter, ils poyent dire lour verdict generalment, come est mis en lour charge, cōe en le case avandit, ils poient bien dire, que le Lessor ne disseisa pas l' Lessée, sils voilent, &c.

ALso in such case where the Enquest may give their verdict at large, if they will take upon them the knowledge of the Law upon the matter, they may give their verdict generally as is put in their charge, as in the case aforesaid they may well say, that the lessor did not disseise the Lessee, if they will, &c.

¶ ALthough the Jury if they will take upon them (as Littleton here saith) the knowledge of the law, may give a general verdict, yet it is dangerous for them so to doe; for if they doe mistake the law, they run into the danger of an Attaint; therefore to find the special matter is the safest way, where the case is doubtfull.

Sect.

*Sect.*369.

¶ *Pur ceo que il nad aſcun eſcripture de ceo.* Hereby it alſo appeareth, That albeit the condition was executed by reentrie, yet the Leſſor cannot plead it without ſhewing of a Deed. But of this matter ſufficient hath bæn ſaid before in the two next preceding Sections.

¶ *Quel eſt bone plea en Barre.* In a caſe where there have bæn ſome variety of opinions in our Books, Littleton here cleareth the doubt, & that upon a good ground. For he himſelf reporteth in our Books, That it was holden by all the Juſtices of England, That a leaſe for life, the reverſion to the Plaintiff, was a good barre in an Aſſiſe, and alſo that a leaſe for years, the reverſion to the plaintiff, might be pleaded in an Aſſiſe: and ſo of a Feoffment in Fee with warranty. And herein the diverſity of pleading is to be obſerved; for in the caſe here put by Littleton of a leaſe for life, the tenant ſhall plead it in Barre. But in a caſe of a leaſe for years, or of an eſtate of Tenant by Sta-

18. E.4. 10.12. Aſſ. 38. 10. Aſſ. 16. 26. H. 6. Bar. 9. 38. Aſſ. 26. 4. 31. Aſſ. 26. 39. Aſſ. 3. 43. Aſſ. 18. 44. Aſſ. 3. 18. E. 3. Aſſ. 77. 31. E. 3. ibid. 97. 18. Aſſ. 22.

4. El. Dyer 207. 8. Eliz. Dyer 246.

¶ Item en meſme le caſe ſi l'caſe fuit tiel, que apres ceo que le Leſſor avoit enter pur default de payment, &c. que le Leſſée uſt enter ſur le Leſſor & luy diſſeiſiſt, en ceſt caſe ſi le Leſſor arraign un Aſſiſe envers l' Leſſée, le Leſſée luy poit barr̄ ōl aſſiſe. Car il poit pleader envers luy ē bar coment le Leſſor que eſt Plaintife fiſt ū Leaſe al Defendant pur terme de ſa vie, ſavant le reverſion al Plaintife, quel eſt bone plea en Barre, entant q̄ il conuſt l'reverſion eſtre al Plaintife, en ceſt caſe le plaintife nad alt̄ matt̄ ō luy ayd̄ forſque le condition fait ſur le Leas, & ceo il ne poit pleader pur ceo q̄ il nad aſcun eſcripture de ceo. Et entant que il ne poit reſpōder al barr, il ſerra barr̄. Et iſſint ē ceſt caſe poyes veier que home eſt diſſeiſie, & ū coze il naver̄a Aſſiſe. Et uncoze ſi le Leſſée ſoit Plaintife, & le Leſſor Defendāt, il barrera le Leſſée per verdict d'aſſiſe, &c. Mes en ceſt caſe lou le Leſſée eſt Defendāt, ſi il ne voil plead le dit plea ē Barre, mes plead nul tort, nul diſſeiſin, dōqs le leſſor recovera p aſſiſe, Cauſa qua ſupra.

ALſo in the ſame caſe, if the caſe were ſuch, That after the Leſſor had entred for default of payment, &c. that the Leſſee had entred upon the Leſſor, and him diſſeiſed; in this caſe, if the Leſſor, arraign an Aſſiſe againſt the Leſſee, the Leſſee may bar him of the Aſſiſe: for he may plead againſt him in barre, how the Leſſor who is Plaintiff made a leas to the Defendant for term of his life, ſaving the Reverſion to the Plaintiff, which is a good plea in barre, in ſo much as he acknowledges the reverſion to be to the Plaintiff. In this caſe the Plaintiff hath no matter to ayd himſelf, but the condition made upon the leaſe, and this he cannot plead, becauſe he hath not any writing of this: & inaſmuch as he cannot anſwer the bar, he ſhall be barred. And ſo in this caſe you may ſee that a man is diſſeiſed, and yet he ſhall not have aſſiſe. And yet if the leſſee be Plaintiff, and the leſſor defendant, he ſhal bar the leſſee by verdict of the aſſiſe, &c. but in this caſe where the leſſee is defendant, if he wil not plead the ſaid plea in bar, but plead *nul tort. nul diſſ.* then the leſſor ſhal recover by aſſiſe, *Cauſa qua ſupra.*

tute

ture or Elegit, the defendant shall not plead in bar, as to say, Assisa non, &c. but justifie by force of the Lease, &c. and conclude, & issint sans tort. And if the Tenant of the Freehold be not named, he shall plead Nul tenant de franktenement nosme en le briefe: and in the case of the feoffment with warranty, he must rely upon the warranty.

Sect. 370.

¶ Item, put ceo q̄ tielx conditions sont plus communement mis & especifies en faits endentes, alcun petit chose serra icy dit (a toy mon fits) de endenture & de fait Poll conternāts cōditions. Et est alcavoir, que si lendēture soit bipartite, ou tripartite, ou quadripartite, touts les partes de lendenture ne sont q̄ un fait en ley, & chescun part de lendenture est de auxy grande force & effect, sicome touts le parts ensemble.

AND for that such conditions are most commonly put and specified in deeds indented, somewhat shall here be said (to thee my sonne) of an Indenture, and of a Deed Poll concerning Conditions. And it is to be understood, that if the Indenture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture are but one Deed in Law, and every part of the Indenture is of as great force and effect as all the parts together be.

¶ *En faits endentes.* Vide Sect. 217. Those are called by several names, as Scriptum indentatum, charta indentata, Scriptura indentata, indentura, Literæ indentatæ. An Indenture is a writing containing a Conveyance, Bargaine, Contract, Covenants or Agreements betwen two or more, and is indented in the top or side, answerable to another that likewise comprehendeth the self-same matter, and it is called an Indenture, for that it is indented, and is called in greek συγγραφον.

If a deed beginneth, Hæc Indentura &c. and in troth the Parchment or Paper is not Indented; this is no indenture, because words cannot make it indented. But if the deed be actually indented, and there be no words of Indenture in the Deed, yet it is an Indenture in law, for it may be an Indenture without words; but not by words without indenting. Lib. 5. fo. 20. Stiles case

¶ *En faits indent* And here it is to be understood, that it ought to be in Parchment or in Paper. For if a writing be made upon a piece of wood, or upon a piece of Linen, or in the bark of a tree, or on a stone, or the like, &c. and the same be sealed or delibered, yet it is no Deed; for a Deed must be written either in Parchment or Paper, as before is said, for the writing upon these is least subject to alteration or corruption. 14. E. 3. Ley. 79. 4. E. 2. Fines 116. 4. E. 2. Ley. 68. 2. R. 2. Dct. 4. 27. H. 6. 9. F. N. B. 122. L.

¶ *Si lendenture soit bipartite, ou tripartite, ou quadripartite,* &c. Bipartite is when there be two parts and two parties to the Deed; Tripartite, when there are three parts and three parties; and so of Quadripartite, Quinquepartite, &c.

¶ *Et de fait poll.* A Deed poll is that which is plain without any indenting, so called, because it is cut even or polled: every deed that is pleaded shall be intended to be a deed poll, unless it be alledged to be indented.

¶ *Touts les parts del endenture ne sont que un en ley.* If a man by Deed indented make a gift in tail, and the Donee dyeth without issue, that part of the Indenture which belonged to the Donee, doth now belong to the Donor, for both parts do make but one Deed in law. 38. H. 6. 24, 25. 9. H. 6. 35. 35. H. 6. 3. 9. E. 3. 18. 9. E. 4. 18. Pl. Com. 134.

¶ *Et chescun part del Indenture est de auxy grand force,* &c. This is manifest of it self, and is proved by the Books aforesaid.

It is to be observed, that if the Feoffor, Donor, or Lessor seal the part of the Indenture belonging to the Feoffee, &c. the Indenture is good, albeit the Feoffee never sealeth the Counter part belonging to the Feoffor, &c.

Sect. 371.

¶ ET feaſance de Indenture eſt en deux maners. Un eſt de faire eux en le tierce perſon. Un anter eſt de faire eux en le primer perſon. Le feaſance en le tierce perſon eſt come en tiel forme.

Hæc Indentura facta inter R. de P. ex una parte, & V. de D. ex altera parte, Teſtatur, quod prædictus R. de P. dedit & conceſſit, & hac præſenti carta indentata confirmavit præfato V. de D. talem terram. &c. Habendum & tenendum, &c. ſub conditione, &c. In cujus rei teſtimonium partes prædictæ ſigilla ſua præſentibus alternatim appoſuerunt. *Vel ſic*: in cujus rei teſtimonium uni parti hujus Indenturæ penes præfatum V. de. D. remanenti, prædict' R. de P. ſigillum ſuum appoſuit, alteri verò parti ejuſdem Indenturæ penes R. de P. remanenti idem V. de D. ſigillum ſuum appoſuit, Dat. &c.

Tiel Endenture eſt appel endenture fait en le tierce perſon, pur ceo que les Verbes &c. ſont en la tierce perſon. Et tiel forme dendentures eſt de pluis ſure feaſance, pur ceo que eſt pluis communement uſe, &c.

AND the making of an Indenture is in two manners. One is to make them in the third perſon. Another is to make them in the firſt perſon. The making in the third perſon is as in this form.

This Indenture made between R. of P. of the one part, and V. of D. of the other part Witneſſeth, That the ſaid R. of P. hath granted, and by this preſent Charter intended, confirmed to the aforeſaid V. of D. ſuch Land, &c. To have and to hold, &c. upon Condion, &c. In Witneſs whereof the parties aforeſaid to theſe preſents, interchangably have put their Seals. Or thus: *In witneſs whereof, to the one part of this Indenture, remaining with the ſaid V. of D. the ſaid R. of P. hath put his Seal; and to the other part of the ſame Indenture remaining with the ſaid R. of P. the ſaid V. of D. hath put his Seal, Dated, &c.*

Such an Indenture is called an Indenture made in the third perſon, becauſe the Verbs, &c. are in the third perſon. And this form of Indentures is the moſt ſure making, becauſe it is moſt commonly uſed, &c.

9. E. 3. 18. Vide the Books afore rehearſed.

¶ *Et le feaſance del Indenture eſt en deux manners, &c.* Here is another of our Authors perfect diviſions. In this and the next Section following Littleton doth illuſtrate his meaning, by ſetting down forms and examples, which do effectually teach.

Vide 40. E. 3. 2. 7. H. 7. 14. Dyer 28. H. 19. Lib. 2. fol. 4. & 5. Godards caſe

In theſe two forms there are to be obſerved (amongſt other) three general parts of the ſame, viz. the premiſes, the Habendum, and the In cujus rei teſtimonium. But hereof hath been ſpoken at large, Sect. 1. 4 & 40. for Littleton ſpeaketh not here of the delivery, but only of the Context or words of the Deed.

17. Eliz. Dyer 342. 1. R. 3. 14. H. 6. 28. Bab. 12. H. 3. 12. 30. Aſſ. 21.

¶ *Pur ceo que eſt le pluis communement uſe.* Here it appeareth that that which is moſt commonly uſed in Conveyances is the ſureſt way. A communi obſervantia non eſt recedendum, & minime muranda ſunt quæ certam habuerunt interpretationem: Magiſter rerum Uſus. It is provided by the Statute of 38 E. 3. cap. 4. that all penal Bonds in the third perſon

Perſon be void and holden for none, wherein ſome of our Books (d) ſeem to differ, but they being rightly underſtood, there is no difference at all. For the Statute is to be intended of Bonds taken in other Courts out of the Realm, and ſo it appeareth by the preamble of that Act. And it was principally intended of the Courts of Rome, and ſo it appeareth by Juſtice Hankford, in 2 H. 4. in which Courts Bonds were taken in the third perſon. So as ſuch Bonds made out of the Realm, are void; but other Bonds in the third perſon are reſolved to be good as well as Indentures in the third perſon, by the opinion of the whole Court, in 8 E. 4.

(d) 40 E. 3. 1. 2 H. 4. 10. 8 E. 4. 5.

Sect. 372.

LE feaſance de Indenture en le primer perſon eſt come in tiel forme. Omnibus Chriſti fidelibus ad quos præſentes literæ indentatæ pervenerint. A. de B. ſalutem in Domino ſempiternam. Sciatis me dediſſe, conceſſiſſe, & hac præſenti carta mea indentata confirmaſſe C. de D. talem terram, &c. *Vel ſic*: Sciant præſentes & futuri, quòd ego A. de B. dedi, conceſſi, & hac præſenti charta mea indentata confirmavi C. de D. talem terram, &c. Habendum & tenendum, &c. ſub conditione ſequenti, &c. In cujus rei teſtimonium tam ego præd' A. de B. quam prædict' C. de D. his Indenturis ſigilla noſtra alternatim appoſuim', *Vel ſic*: In cujus rei teſtimonium ego præfatus A. uni parti hujus, Indenturæ ſigillum meum appoſui, alteri verò parti ejuſdem Indenturæ prædict' C. de D. ſigillum ſuum appoſuit, &c.

THE making of an Indenture in the firſt perſon, is as in this form: *To all Chriſtian people to whom theſe preſents indented ſhall come, A. of B. ſends greeting in our Lord God everlaſting. Know ye me to have given, granted, and by this my preſent Deed indented, confirmed to C. of D. ſuch land, &c.* Or thus: *Know all men preſent and to come, that I. A. of B. have given, granted, and by this my preſent Deed indented, confirmed to C. of D. ſuch land, &c. To have and to hold, &c. upon Condition following, &c. In witneſs whereof, as well I the ſaid A. of B. as the aforeſaid C. of D. to theſe Indentures have interchangeably put our Seals.* Or thus: *In witneſſe whereof I the aforeſaid A. to the one part of this Indenture have put my Seal, and to the other part of the ſame Indenture, the ſaid C. of D. hath put his Seal, &c.*

¶ Here Littleton ſets down three forms of Deeds indented in the firſt perſon. Brevis via per exempla, longa per præcepta. It is requiſite for every Student to get Preſidents and approved forms, not only of deeds according to the example of Littleton, but of Fines and other Conveyances and aſſurances, and eſpecially of good and perfect pleading, and of the right entries and forms of Judgments, which will ſtand them in great ſtead, both while he ſtudies, and after when he ſhall give counſel. It is a ſafe thing to follow approved Preſidents; for Nihil ſimul inventum eſt, & perfectum.

Vide Sect. 371.

Sect. 373.

¶ ET il ſemble que tiel enden-ture que eſt fait en le primer perſon eſt auxy bone en la

AND it ſeemeth that ſuch Indenture which is made in the firſt perſon is as good in Law as the

ley, ſicome lendenture fait en le tierce perſon, quant ambideux parties ont a ceo miſe lour ſeals: car ſi en lendenture fait en l'tierce perſon, ou en le primer perſon mention ſoit fait que le grantor avoit miſe ſolement ſon ſeal, et nemy le grantée, donques eſt lendenture tantſolement le fait l'grantor. Mes lou mention eſt fait que le grantée ad mis ſon ſeale a lendenture, &c. donques eſt lendenture auxy bien le fait le grantée come le fait le grantor. Iſſint il eſt le fait dambideux, & auxy theſcun part de lendenture eſt le fait dambideux parties en tiel caſe.

Indenture made in the third perſon, when both parties have put to this their ſeals; for if in the Indenture made in the third perſon, or in the firſt perſon, mention be made that the Grantor only hath put his ſeal, and not the Grantee, then is the Indenture only the deed of the Grantor. But where mention is made that the Grantee hath put to his ſeal to the Indenture, &c. then is the Indenture as well the deed of the Grantee as the deed of the Grantor. So it is the deed of them both; and alſo each part of the Indenture is the deed of both parties in this caſe.

¶ Here is to be obſerved, that albeit the words in this Indenture be only the words of the Feoffor, yet if the Feoffee put his Seal to the one part of the Indenture, it is the deed of them both. And in this ſpecial caſe to make it the deed of the Feoffee, it appeareth by Littleton, that mention muſt be made in the Deed, that he hath put to his Seal, for that he is no way made party to make it, being made in the firſt perſon, but only by the clauſe of putting his Seal thereunto. Otherwiſe it is of a deed indented in the third perſon, as before it appeareth, for there he is made party to the Deed in the beginning. And Littletons rule is true, that every part of an Indenture is the Deed of both parties; for as it hath been ſaid, both parts make but one deed in Law in that caſe.

Sect. 374.

¶ *Sur certain condition, &c.* Here by this (&c.) is implyed that the Condition in this caſe doth extend both to the eſtate for life, and to the remainder, but by ſpecial limitation it may extend to any one of them, and not to the other. And albeit he in the remainder be no party to the Indenture (the parties thereunto only being the Leſſor and the Tenant for life) yet when he in the remainder entreth and agreeth to have the lands by force of the Indenture, he is bound to perform the conditions contained in the In-

¶ Item ſi eſtate ſoit fait p Indenture a un home pur terme de ſa vie, le remainder a un auter en fee ſur certain condition, &c. & ſi le tenant a terme de vie avoit mis ſon ſeale al part de lendenture, & puis mourſt; & il que eſt en le remainder entr en la terre per force de ſon remainder, &c. en ceſt cas il eſt tenus de performer touts les conditions compriſe en

Alſo if an eſtate be made by Indenture to one for term of his life, the remainder to another in fee upon a certain condition, &c. and if the Tenant for life have put his ſeal, to the part of the Indenture, and after dieth, and he in the remainder entreth into the land by force of his remainder, &c. In this caſe he is tied to perform all the conditions compriſed

len-

lendenture, ſicome le tenant a terme de vie, deboit fair en ſa vie, & uncore ceſtuy en le remainder ne unqs enſeal' aſcun part del endenture. Mes la cauſe eſt, que entant que il enter & agrea daver les terres per force del endenture, il eſt tenus de performer les conditions deins meſme lendenture ſil voile aver la terre, &c.

in the Indenture, as the tenant for life ought to have done in his life time, and yet he in the remainder never ſealed any part of the Indenture. But the cauſe is, for that inaſmuch as he entred and agreed to have the lands by force of the Indenture, he is bound to perform the conditions within the ſame Indenture, if he will have the land, &c.

denture. And here is alſo a diverſity to be underſtood, that any eſtranger to the Indenture may take by way of remainder, but he cannot in this caſe take any preſent eſtate in poſſeſſion, becauſe he is an eſtranger to the Deed.

If A. by Deed indented between him and B. letteth lands to B. for life, the remainder to C. in fee, reſerving a Rent, Tenant for life dieth, he in the remainder entreth into the lands, he ſhall be bound to pay the Rent, for the cauſe and reaſon before yielded by Littleton. An Indenture of Leaſe is ingroſſed between A. of the one part, and D. and R. of the other part, which purporteth a demiſe for years by A. to D. and R. A. ſealeth and delivereth the Indenture to D. and D. ſealeth the Counterpane to A. But R. did not ſeal and deliver it. And by the ſame indenture it is mentioned, that D. and R. did grant to be bound to the Plaintiff in 20. pound in caſe that certain conditions compriſed in the indenture were not performed. And for this 20. pound A. brought an action againſt D. onely, and ſhewed forth the Indenture. The defendant pleaded that it is proved by the Indenture that the demiſe by Indenture was made to D. and R. which R. is in full life, and not named in the writ, Judgment of the writ. The Plaintiff replied, that R. did never ſeal and deliver the indenture, and ſo his writ was good againſt D. ſole. And there the counſel of the Plaintiff took a diverſity between a Rent reſerved which is parcel of the leaſe, and the land charged therewith, and a ſum in groſs, as here the twenty pound is: for as to the rent they agreed that by the agreement of R. to the Leaſe, he was bound to pay it: but for the 20. pound, that is a ſumme in groſſe, and collateral to the Leaſe, and not annexed to the land, and groweth due onely by the deed, and therefore R. ſaid he was not chargable therewith, for that he had not ſealed the deed. But in aſmuch as he had agreed to the leaſe which was made by indenture, he was chargeable by the indenture for the ſame ſum in groſſe: and for that R. was not named in the writ, it was adjudged that the writ did abate.

30 E. 3. 22. 3 H. 6. 26. b.

38 E. 3. 8. 2. 3 H. 6. 26. b. Vide 43 E. 3. 11, 12.

¶ *Aver la terre, &c.* Here is implied an ancient maxime of the Law, viz. Qui ſentit commodum ſentire debet & onus, Et tranſit terra cum onere.

Sect. 375.

¶ Item ſi feoffment ſoit fait per fait Poll ſur condition, & pur ceo q̄ l' condition neſt pas performe, le feoffor entra & happa la poſſeſſion de la fait Poll, ſi le feoffee port un action de cel entry enders le feoffor, il ad eſte queſtion ſi le feoffor poit pleder le condition per le dit fait Poll encounter le feoffee. Et aſcuns ont dit que non, entant que il

ALſo if a feoffment be made by deed Poll upon condition, and for that the condition is not performed, the feoffor entreth and getteth the poſſeſſion of the deed Poll, if the feoffee brings an action for this entry againſt the feoffor, it hath been a queſtion, if the feoffor may plead the condition by the ſaid deed Poll againſt the feoffee. And ſome have ſaid

ſemble a eux que un fait Poll, & le propertie de meſme le fait appertient a celuy a que le fait eſt fait, & nemy a celuy que fiſt le fait. Et entant que tiel fait ne attient al feoffor, il ſemble a eux que il ne poit pas ceo pleder. Et auters ont dit le contrarie, & ont monſtre divers cauſes. Un eſt, ſi le caſe fuit tiel, que en action perenter eux, ſi le feoffee pleder meſme le fait & monſtre eſt al Court, en ceſt cas entant que le fait eſt en Court, le feoffor poit monſtrer al Court coment en le fait ſont divers conditions deſtre perfoymes de le part le feoffee, &c. & pur ceo que ils ne fueront perfoymes, il enter, &c. & a ceo il ſerra reſceive. Per mꝫ le reaſon quant le feoffor ad le fait en poigne, & ceo monſtra a le Court, il ſerra bien reſceive de ceo pleder, &c. & noſment quant le feoffor eſt privy al fait, car covient eſtre privy al fait quant il fiſt le fait, &c.

he cannot, inaſmuch as it ſeems unto them that a deed Poll and the property of the ſame deed belongeth to him to whom the deed is made, and not to him which maketh the deed. And inaſmuch as ſuch a deed doth not appertain to the feoffor, it ſeems unto them that he cannot plead it. And others have ſaid the contrary, and have ſhewed divers reaſons: one is, if the caſe were ſuch that in an action between them, if the feoffee plead the ſame deed, and ſhew it to the Court, in this caſe, inſomuch as the deed is in Court, the feoffor may ſhew to the Court how in the deed there are divers conditions to be performed of the part of the feoffee, &c. and becauſe they were not performed, he entred, &c. and to this he ſhall be received. By the ſame reaſon when the feoffor hath the deed in hand, and ſhews this to the court, he ſhall well be received to plead it, &c. & namely, when the feoffor is privy to the ſait; for he muſt be privy to the deed when he makes the deed, &c.

(a) Vide Sect. 370. 302. 340.

¶ HEre the latter opinion is clear Law at this day, and is Littletons own opinion (a) as before hath been obſerved.

¶ *Ont monſtre divers cauſes.*

Fœlix qui potuit rerum cognoſcere cauſas.
Et ratio melior ſemper prævalet.

24 E. 3. 73. 45 E. 3. Monſtrans des faits 55. (b) 40 Aſſ. 34. lib. 5. 75. b. Wymarks caſe. (c) 12 H. 4. 8. 42 E. 3. 27. Wymarks caſe, ubi ſupra. 38 H. 6. 2. 41 Aſſ. 29. 12 H. 4. 8. 7 H. 4. 29. 11 H. 4. 73. 45 E. 3. 11. F. N. B. 243.

¶ *Entant que le fait eſt en Court, &c.* And herewith do agree (b) many Authorities in Law. (c) And if the Deed remain in one Court, it may be pleaded in another Court without ſhewing forth; Quia lex non cogit ad impoſſibilia.

¶ *Le part le feoffee, &c.* Here alſo is implied, if the condition be to be perfoymed on the part of the Feoffor, or by a ſtranger; and it is to be underſtood, that when a Deed is ſhewed forth to the Court, the Deed ſhall remain in Court all that Tearm in the cuſtody of the Cuſtos brevium: but at the end of the Tearm (if the Deed be not denied) then the Law adjudgeth the Deed in the cuſtody of the party to whom it belongeth: for a mans evidences are as it were the ſtrewes of his land. But if the Deed be denied, then the deed in judgment of Law remaineth in Court until the plea be determined. The reſidue of this Section needeth no explication.

Sect.

Sect 376.

¶ AUry ſi deux hões ſont un treſpas a un auter, le quel releaſe a un de eux per ſon fait, touts actions perſonals, & nient obſtant il ſuiſt action de treſpaſs enbers lauter le defendant bien poit monſtrer que le treſpaſſe fuit fait per luy & per un auter ſon companion, & que le Plaintife per ſon fait que il monſtre avant releſſa a ſon companion touts actions perſonals, judgement ſi action, &c. Et uncore tiel fait appertient a ſon companion, & nemy a luy, mes pur ceo que il poit aver advantage pur le fait ſi boit monſtrer le fait al Court, il poit ceo bien pleder, &c. Per meſme le reaſon poit le feoffor en lauter cas quant il doit aver advantage per le condition compꝛis deins le fait Poll.

ALſo if two men do a treſpaſſe to another, who releaſes to one of them by his Deed all actions perſonals, and notwithſtanding ſueth an action of treſpaſſe againſt the other, the defendant may well ſhew that the treſpaſſe was done by him, and by another his fellow, and that the Plantiff by his deed (which he ſheweth forth) releaſed to his fellow all Actions perſonals, and demand the judgment, &c. and yet ſuch deed belongeth to his fellow, and not to him; but becauſe he may have advantage by the deed if he will ſhew the Deed to the Court, he may well plead this, &c. by the ſame reaſon may the feoffor in the other caſe when he ought to have advantage by the condition compriſed within the Deed Poll.

¶ *SI deux homes font un treſpaſſe a un auter, &c.* Here by this Section it is to be underſtood that when divers do a treſpaſſe, the ſame is Joynt or ſeveral at the will of him to whom the wrong is done, yet if he releaſe to one of them, all are diſcharged, becauſe his own Deed ſhall be taken moſt ſtrongly againſt himſelf; but otherwiſe it is in caſe of appeal of death, &c. as if two men be jointly and ſeverally bounden in an Obligation, if the Obligee releaſe to one of them, both are diſcharged: and ſeeing the Treſpaſſers are parties & privies in wrong, the one ſhall not plead a Releaſe to the other without ſhewing of it forth, albeit the Deed appertain to the other. 27 E.3.83. 13 E.4.2. 15 E.4.26. 21 E.4.72. 22 E.4.7. 8 H.6.15. 20 H.6.41.21 H.6. Arbitrement 41. 2 R.3.9. 2 14.H.8.10. 34 H.8. tit. Eſtrange al fait 21. 3 H.6.18.26.

If an action of debt upon an Obligation be brought againſt an heir, he may plead in bar a releaſe made by the Obligee to the Executors. But albeit the Deed belong to another, yet muſt he ſhew it forth: for both of them are privy to the Teſtator. 13 E.2. tit. Monſtrand des faits 42.

¶ *Per meſme le reaſon.* Ubi eadem Ratio, ibi idem Jus.

Sect. 377.

¶ AUry ſil le feoffee donaſt ou grantaſt le fait Poll al feoffor, tiel grant ſerra bone, & donques le fait & le propertie del

ALſo if the feoffee granteth the deed to the feoffor, ſuch grant ſhall be good, and then the deed and the property thereof belongeth

¶ *LE property del fait appertient al feoffor.* Hereby it appeareth that a man may give or grant his deed to another: and ſuch a grant by Paroll is good.

Any

And it is alſo implied, That if a man hath an Obligation, though he cannot grant the thing in Action, yet he may give or grant the Deed, viz. the Parchment and wax to another, who may cancel and uſe the ſame at his pleaſure.

¶ *Serra pluis toſt entend' que il vient al fait per loyall meane, que per tortious meane.* Omnia præſumuntur legitimè facta, donec probetur in contrarium. Injuria non præſumitur.

¶ Quære de dubiis. There be three kinds of unhappy men.

1. Qui ſcit & non docet, He that hath knowledge and teacheth not.

2. Qui docet & non vivit, He that teacheth and liveth not thereafter.

3. Qui neſcit & non interrogat, He that knoweth not, and doth not inquire to underſtand. Therefore Littleton ſaith, Quære de dubiis.

fait appertient al Feoffor, &c. Et quant le Feoffor ad le Fait en poigne, & eſt plead al court, il ſerra pluis toſt entendue que il vient al Fait per loyal meane, que per tortious meane. Et iſint a eux ſemble que le Feoffor poit bien pleader tiel fait polle que compprent condition, &c. tiel ad le fait en poigne. Ideo ſemper quære de dubiis, quia per rationes pervenitur ad legitimam rationem, &c.

to the ſeoffor, &c. and when the ſeoffor hath the deed in hand, and is pleaded to the Court, it ſhall be rather intended that he cometh to the Deed by lawful means, then by a wrongful mean: and ſo it ſeemeth unto them, That the ſeoffor may well plead ſuch Deed pol which compriſeth the condition, &c. if he hath the ſame in hand. *Ideo ſemper quære de dubiis, quia per rationes pervenitur ad legitimam rationem, &c.*

Infœlix cujus nulli ſapientia prodeſt.
Infœlix qui recta docet, cum vivit inique.
Infœlix qui pauca ſapit ſpernitque doceri.

¶ Quia per rationes pervenitur ad legitimam rationem. For Ratio eſt Radius divini Luminis. And by reaſoning and debating of grave learned men the darkneſs of ignorance is expelled, and by the light of legal Reaſon the Right is diſcerned, and thereupon Judgment given according to law, which is the perfection of Reaſon. This is of Littleton here called Legitima ratio, wherunto no man can attain but by long ſtudie, often conference, long experience, and continual obſervation.

Certain it is, that in matters of difficulty the more ſeriouſly they are debated and argued, the more truely they are reſolved, and thereby new inventions juſtly avoided.

Inter cuncta leges, & percunctabere Doctos.

Sect. 387.

¶ *Condition en ley, &c.* Littleton having ſpoken of conditions in Deed now according to his own diviſion cometh to ſpeak of conditions in Law.

¶ *Que ne ſoit ſpecifie en Eſcript.* A condition in Law is, that which the Law intendeth or impliſeth without expreſſe words in the Deed.

¶ Eſtates que homes ont ſur condition en ley, ſont tiels eſtates que ont un condition per la ley a eux anner, coũt que ne ſoit ſpecifie en eſcript. Sicome home grant per ſon fait a un auter loffice de

Eſtates which men have upon condition in Law, are ſuch Eſtates which have a Condition by the law to them annexed albeit that it be not ſpecified in writing. As if a man grant by his Deed to another the

Par-

Parkerſhip de un park a aũ & occupier meſme loffice pur terme de ſon vie, leſtate que il ad en loffice eſt ſur condition en ley, teſtaſcavoir, que le parker bien et loyalment gardera le park, & ferra ceo q̃ a tiel office appertient a faire, ou autrement bien lirroit al grauntor et a ſes heires de luy ouſte, et de grant ceo a un auter ſil voit, &c. Et tiel condition que eſt entendus per la ley eſtre annexe a aſcun choſe, eſt auxy fort ſicome la condition fuiſſoit mis en eſcript.

the office of Parkerſhip of a Park, to have and occupie the ſame office for term of his life, the eſtate which he hath in the office is upon Condition in Law, to wit, that the Parker ſhall well and lawfully keep the Park, and ſhall do that which to ſuch office belongeth to do, or otherwiſe it ſhall be lawful to the Grantor and his heirs to ouſt him, and to grant it to another if he will, &c. And ſuch condition as is intended by the Law to be annexed to any thing, is as ſtrong as if the condition were put in writing.

¶ *Que le Parker bien & loyalment gardera le Parke, &c.* Parke, this ſhould be written, Parque which is a French word, and ſignifieth that which we vulgarly call a Park, of the French verbe Parquer to imparke, to encloſe. It is called in Domeſday, Parcus. In Law it ſignifieth a great quantity of ground incloſed, priviledged for wild beaſts of chaſe by preſcription, or by the Kings grant.

The beaſts of Parque, or chaſe, properly extend to the Buck, the Doe, the Fox, the Martin, the Roe, but in a common and legal ſenſe, to all the beaſts of the Foreſt. There be both Beaſts and Fowles of the Warren, Beaſts, as Hares, Conies, and Roes, called in Records (d) Capreoli. Fowles of two ſorts, viz. Terreſtres and Aquatiles; Terreſtres of two ſorts, Silveſtres and Campeſtres: Campeſtres, as Partridge, Quaile, Raile, &c. Silveſtres, as Pheſant, woodCock, &c. Aquatiles, as Mallard, Herne, &c. whereof I have ſeen in this Record, (*) Rex Johanni de Beverly Armigero ſuo quod ipſe cum quibuſcunque canibus ſuis ad quaſcunque beſtias feras Regis in quibuſcunque foreſtis, parcis ſuis, quotieſcunque voluerit, venari poſſit, & quoſcunque Falcones poſſit permittere volare ad quaſcunque aves de Warrena in quibuſcunque ripariis, &c.

(d) Hill. 13 E.3 Coram Rege in Theſaur.

(*) 38 E.3. fol. patent pars 1. m. 10.

It is reſolved (e) by the Juſtices and the Kings Counſel, that Capreoli, id eſt, Roes, non ſunt beſtiæ de Foreſta, eo quod fugant alias feras. Beaſts of Foreſts be properly Hart, Hind, Buck, Hare, Boar and Wolfe, but legally all wild beaſts of Warren.

(e) Hill. 13 E.3. coram Rege in Theſaur.

A Foreſt and Chaſe are not; but a Park muſt be incloſed. The Foreſt and Chaſe do differ in Offices and Laws: every Foreſt is a Chaſe, but every Chaſe is not a Foreſt. A ſubject may have a Foreſt by ſpecial grant of the King, as the Duke of Lancaſter, and Abbot of Whitby had.

Vide Sect. 1.

Ockam cap. quid Regis Foreſta, ſaith. Foreſta eſt tuta ferarum manſio, non quarumlibet, ſed ſilveſtrium, non quibuſlibet in locis, ſed certis, & ad hoc idoneis, unde Foreſta E. mutata in O Quaſi fereſta, hoc eſt, Ferarum ſtatio.

Vide Bract. fo. 232. & 316. Britton fo. 34. Electa lib. 2. cap. 34, 35.

Pudzeld or Woodgeld is to be free from payment of money for taking of wood in any Foreſt. But let us now return to our Littleton.

In this Section Littleton putteth an example of a condition in Law annexed to the office of the keeper of a Park; but this example muſt be underſtood with a diſtinction; for if the Parker doth not attend on the Park one or two, &c. days, this is no forfeiture of the office of Parkerſhip; but if in his default any Deer be killed and ſo a damage to the Lord, that is a forfeiture: for (that it may be ſaid once for all) non-uſer of it ſelf without ſome ſpecial damage is no forfeiture of private offices, but non-uſer of publick offices which concern the adminiſtration of Juſtice, or the Commonwealth, is of it ſelf a cauſe of forfeiture.

5 E.4.15.b. L. 3. E.4.28. Pl. Com. 379, 380.

2 H.7.11. 30 H.6.32, &c.

¶ *Luy ouſter ſil voit, &c.* Littleton here ſpeaketh of an Ouſter by force of a Condition in Law; therefore it is to be ſeen in what other caſes the Grantor may lawfully ouſt his Officer.

There is a diverſity between Officers that have no other profit but a collateral certain Fee, for there the Grantor may diſcharge him of his ſervice, as to be a Baily, receiver, ſurveyor

18 E.4.8. 31 H.8. grants Br. 134. 34 H.8. ibid. 93. 11 Eliz. Dyer 285.

beyor, Auditor, or the like, the exerciſe whereof is but labour and charge to him, but he muſt have his fee: for the main rule of Law is, that no man can fruſtrate or derogate from his own grant to the prejudice of the Grantee. And where albeit the Grantee hath no other profit but his fee, yet that fee is to be received and and taken out of the profits appertaining to the Lord within his office; for there the Grantor cannot diſcharge him of his ſervice or attendance, for that may turn to the prejudice of the Grantee, if the Grantor will not grant the Office at all. But in all caſes where the Officer relinquiſheth his Office, and refuſeth to attend, he loſeth his Office, Fee, Profit and all.

There is another diverſity, where the Grantee, beſides his certain fee, hath profits and availes by reaſon of his Office, there the Grantor cannot diſcharge him of his ſervice or attendance, for that ſhould be to the prejudice of the Grantee. As if a man doth grant to another the office of the Stewardſhip of his Courts of his Mannors with a certain fee, the Grantor cannot diſcharge him of his ſervice and attendance, becauſe he hath other profits and fees belonging to his Office, which he ſhould loſe if he were diſcharged of his Office. And as in the caſe which Littleton here putteth of the office of the Keeper of a Park, for that he hath not only his fee certain, but profits and availes alſo in reſpect of his Office, as Deer Skinnes, Shoulders, &c. But now let us proceed and ſee what other particular forfeitures in Law be of this Office here ſpoken of by Littleton, and ſomewhat of Conditions in Law in general.

22 H.6.10. 3 E.6.6. Dyer 71.

15 E.4.3.1. 5 E.4.26. 25 H.8. Bendloes inter Eveſque des Londres & Hieron. lib.9.fo.53,95, 96, 99.

And it is to be underſtood, that if any Keeper ſell any Deer without warrant, or fell or cut any Trees, Woods or Underwoods, and convert them to his own uſe, it is a forfeiture of his Office, for the deſtruction of Deer is, by a mean, deſtruction of Veniſon. So it is if he pull down the lodge, or any houſe within the Park for putting of Hay into it for feeding of the Deer, or ſuch like, it is a forfeiture; and the reaſon wherefore the Office in theſe and in like caſes ſhall be forfeited, (f) is, quia in quo quis delinquit, in eo de jure eſt puniendus.

(f) Mich. 33 E.1. coram Rege in Theſaur. Leveſque de Durhams Caſe. Pl.Com.379.a. Sir Henry Nevils Caſe, 21 E.4.20,93. Lib.8. fo.44. Wittinghams Caſe.

As to conditions in Law, you ſhall underſtand they be of two natures, that is to ſay, by the Common Law, and by Statute. And thoſe by the Common Law are of two natures, that is to ſay, the one is founded upon skill and confidence, the other without Skill or Confidence: Upon skill and confidence, as here the office of Parkerſhip and other Offices in the next Section mentioned, and the like.

Touching conditions in Law without skill, &c. ſome be by the Common Law, and ſome by the Statute. By the Common Law as to every eſtate of Tenant by the Courteſie, Tenant in tail after poſſibility of iſſue extinct, Tenant in dower, Tenant for life, Tenant for years, Tenant by Statute merchant or Staple, Tenant by Elegit, Gardian, &c. there is a condition in Law ſecretly annexed to their eſtates, that if they alien in fee, &c. that he in the reverſion or remainder may enter, & ſic de ſimilibus; or if they claim a greater eſtate in Court of Record, or the like.

Concerning conditions in Law founded upon Statutes, for ſome of them an entry is given, and for ſome other a recovery by action: where an entry is given, as upon an alienation in Mortmain, &c. and the like. Where an action is given, or for waſt againſt Tenant for life and years, and the like.

¶ *Et tiel condition que eſt entendus per la ley eſtre annex a aſcun choſe eſt auxy fort, &c.* Here it is worthy the obſervation to take a view of the diviſions aforeſaid in ſome particular caſe. As for example. Admit that an Office of Parkerſhip be granted or deſcend to an Infant or Feme Covert, if the conditions in Law annexed to this Office which require skill and confidence be not obſerved and fulfilled, the Office is loſt for ever, becauſe, as Littleton ſaith here, it is as ſtrong as an expreſs Condition. But if a Leaſe for life be made to a Feme covert, or an Infant, and they by charter of feoffment alien in fee, the breach of this condition in Law, that is without skill, &c. is no abſolute forfeiture of their eſtate. So of a condition in Law given by Statute, which giveth an entry only; As if an Infant, or Feme covert with her husband aliens by Charter of feoffment in Mortmaine, this is no bar to the Infant, or Feme covert. But if a recovery be had againſt an Infant or Feme covert in an action of waſte, there they are bound and barred for ever.

Lib.8.fol.44. Wittinghams Caſe.

And it is to be obſerved, that a condition in Law by force of a Statute which giveth a recovery is in ſome caſe more ſtrong than a condition in Law without a recovery. For if Leſſee for life make a leaſe for years, and after enter into the land, and make waſte, and the Leſſor recover in an Action of waſte, he ſhall avoid the leaſe made before the waſte done. But if the Leſſee for life make a Leaſe for years, and after enter upon him, and make a feoffment in fee, this forfeiture ſhall not avoid the leaſe for years. Nor in any of the ſaid caſes a precedent Rent granted out of the land ſhall be avoided. For if Leſſee for life grant

a

a rent charge, and after doth waſte, and the Leſſor recovereth in an action of waſte, he ſhall hold the land charged during the life of the tenant for life; but if the rent were granted after the waſte done, the Leſſor ſhall avoid it.

And the reaſon wherefore the leaſe for years in the caſe aforeſaid ſhall be avoyded, is, becauſe of neceſſity the action of waſte muſt be brought againſt the Leſſee for life, which in that caſe muſt bind the Leſſee for years, or elſe by the Act of the Leſſee for life the Leſſor ſhould be barred to recover Locum vaſtatum, which the Statute giveth.

If a man hath an office for life which requireth ſkill and confidence, to which Office he hath a houſe belonging, and chargeth the houſe with a rent during his life, and after commit a forfeiture of his office, the rent charge ſhall not be avoyded during his life; for regularly a man that taketh advantage of a condition in law, ſhall take the land with ſuch charge as he finds it. And therefore Littleton is here to be underſtood, that a Condition in law is as ſtrong as a condition in deed, as to avoid the eſtate or intereſt it ſelfe, but not to avoid precedent charges, but in ſome particular caſes, as by that which hath been ſaid appeareth.

There be at this day more conditions in law annexed to offices than were when Littleton wrote: for example, for offices in any wiſe touching the adminiſtration or execution of Juſtice, or Clerkſhip in any Court of Record, or concerning the Kings Treaſure, Revenue, Account, Cuſtomes, Vinage, Auditorſhip, Kings Surveyor, or keeping of any of his Majeſties Caſtles, Forts, &c. For if any of theſe officers bargain or ſell any of the ſaid offices or any deputation of the ſame, or take any money or profit, or any promiſe, covenant, bond or aſſurance, to have any mony or reward for the ſame, the perſon ſo bargaining or ſelling, or that ſhall take any ſuch promiſe, covenant, bond or aſſurance, ſhall not onely forfeit his eſtate, but alſo every perſon ſo buying, giving or aſſuring be adjudged a diſabled perſon to have or enjoy the ſame office or offices, deputation or deputations, &c. And that all ſuch bargains, ſales, promiſes, covenants and aſſurances, as be before ſpecified, ſhall be void, except as in the ſame act is excepted.

3. H. 7. ca. 12. Auditor, Receiver, Bailiff, Keeper of a Caſtle, Maſter of the game, Keeper or Parker of any Forreſt, Parke, Chaſe, &c.

7. E. 6. ca. 1. Treaſurer, Receiver. Collector, Bailiff, &c.

5. E. 6. ca. 16.

Sir Robert Vernon Knight being Coferer of the Kings houſe, of the Kings gift, and having the receit of a great ſum of money yearly of the Kings Revenue, did for a certain ſum of money bargain and ſell the ſame to Sir A. I. and agreed to ſurrender the ſaid office to the King, to the intent a grant might be made to Sir A. I. who ſurrendered it accordingly: and thereupon Sir A. was by the Kings appointment admitted and ſworn Coferer. And it was reſolved by Sir Thomas Egerton Lord Chancellour, the chief Juſtice, and others to whom the King referred the ſame, that the ſaid office was void by the ſaid Statute, and that Sir A. was diſabled to have or to take the ſaid office, and that no non obſtane could diſpenſe with this act to enable the ſaid Sir A. for the reaſon and cauſe before mentioned. Sect. 180. And hereupon Sir A. was removed, and Sir Marmaduke Darrel ſworn by (by the Kings commandment) in his place. And note, that all promiſes, bonds and aſſurances, as well on the part of the bargainor, as of the bargainee, are void by the ſame Act. (*) Nulla alia re magis Romana reſpublica interiit, quam quod magiſtratus officia venalia erant.

Mich. 13. Jacobi Regis.

Ll. 3. fo. 83. Colſhils caſe

* Ærod. fo. 353.

(g) Jugurth going from Rome, ſaid to the City, Vale venalis civitas, mox peritura ſi emptorem invenias. (g) Saluſt.

Therefore by the Law of England it is further provided, that no Officer or miniſter of the King ſhall be ordained or made for any gift or bracage, favour or affection, nor that any which purſueth by him or any other privily or openly to be in any manner of office, ſhall be put in the ſame office or in any other, but that all ſuch officers ſhall be made of the beſt and moſt lawfull men and ſufficient. A law worthy to be written in letters of Gold, but more worthy to be put in due execution. For certainly never ſhall Juſtice be duely adminiſtred, but when the officers and miniſters of Juſtice be of ſuch quality, and come to their places in ſuch manner as by this law is required.

12. R. 2. cap. 2.

¶ *Tiel condition que eſt entendus per la ley eſtre annex a aſcun choſe, eſt auxi fort ſicome la condition fuit miſe en eſcript.* And this accords with that ancient rule Utique fortior & potentior eſt diſpoſitio legis quam hominis.

Vid. Sect. 419. 420. 430.

Sect.

Sect. 379.

1. E. 4. 20. Pl. Com. 179.

¶ *Seneſchal.* Of this I have ſpoken before.

8. E. 4. 6.

¶ *Conſtabularie.* Of this likewiſe ſomething hath been ſpoken before. But a conſtable is often taken in the law for a Warden or keeper, as Conſtabularius caſtri de Dover & ſ. portuum; for the Warden of the Caſtle of Dover, and the Cinque-ports, &c. So as in this ſence Conſtabularius is taken for Caſtellanus; and this is proved by the Statute (*) of W. 1. ca. 7. Des priſes de Conſtables ou Caſtellains faitz des autres, &c. And Magna Charta. c. 19. Nullus conſtabularius vel ejus ballivus capiat blada vel alia catalla alicujus qui non ſit de villa, ubi caſtrum ſuum ſitum eſt, &c. Stanford fol. 152. Conſtabularius Turris London, for Cuſtos Turris, 32. H. 8. cap. 28. Conſtable of the Forreſt, for the keeper of the Forreſt.

(*) W. 1. ca. 7.

(b) Magna charta cap. 19.

Stanf. fo. 152. 32. H. 8. cap. 28.

¶ *Bedelarie.* Bedel is derived of the French word Beadeau, which ſignifieth a meſſenger of the Court, or under-Bayliff, in Latine Bedellus.

And the oath of a Bedel of a Mannor is, that he ſhall duely and truely execute all ſuch Attachments and other Proces as ſhall be directed to him from the Lord or Steward of his Court, and that he ſhall preſent all pound Breaches which ſhall happen within his office, and all chattels waived, and eſtrayes.

¶ *Bayliwicke.* Of this ſufficient hath been ſaid before.

¶ Mañ le manner eſt de graunts doffices de ſeneſchal, Conſtabulař, Bedelary, bayliwick, ou auks offices, &c. Mes ſi tiel office ſoit grant a un hom, a aver & occupier per luy ou ſon deputy, donqz ſi loffice ſoit occupy p luy, ou per ſon deputy, ſicom̃ il deboit per le ley eſtre occupy, ceo ſuffiſt pur luy, ou auterment le granter & ſes heirs poient ouſte le grantée come eſt avantdit.

IN this manner it is of grants of the Offices of Steward, Conſtables, Bedelarie, Bayliwick, or other Offices, &c. But if ſuch Office be granted to a man to have and to occupie by himſelfe or his deputy, then if the office be occupied by him or his deputy, as it ought by the Law to be occupied, this ſufficeth for him, or otherwiſe the grantor and his heires may ouſte the Grantee, as is aforeſaid.

Sect. 388.

¶ Here Littleton termeth words of limitation to be Conditions in law: for his firſt example is,

¶ *Durant le coverture enter eux.* Durante coopertura inter eos. This word (Durante) is properly a word of limitation, as Durante viduitate, or Durante virginitate, or Durante vita, &c. And properly a Condition in law is, as hath been ſaid, where the

¶ Item eſtates de fres ou tenemẽts purront eſtre ſur condition en ley, coment que ſur leſtate fait ne fuit aſcun mention ou reherſal fait de le cõdition. Sicome mittomus q̃ un leas ſoit fait a le baron, & a ſa feme, a aver & tener a eux durãt l' coverture

ALſo eſtates of lands or tenements may be made upon condition in law, albeit upon the eſtate made there was not any mention or rehearſal made of this condition. As put the caſe that a leaſe be made to the husband and wife, to have and to hold to them during enter

enter eux, en ceſt cas ils ont eſtate pur term̃ de lour deux vies ſur condition en ley, ſ. ſi un de eux devie, ou que divorce ſoit fait enter eux, donqz bien lirroit a le Leſſor & a ſes heires dentrer, &c.

the coverture between them; In this caſe they have an eſtate for term of their two lives upon condition in law, &c. if one of them die, or that there be a divorce between them, then it ſhall be lawfull for the leſſor & his heirs to enter *&c.*

Law createth the ſame without any expreſs words.

Dum alſo maketh a limitation; as if a leaſe be made, Dum ſola fuerit, 37.H.6. 27.3.E. 3. 13. 3. Aſſ. Pl.
or Dum ſola & caſta vixerit. Dummodo is alſo a word of limitation, as, Dummodo ſolverit talem redditum. Quamdiu alſo is a word of limitation; for if a man grant a rent out of the Manor of D. Quamdiu the Grantor ſhall ſe bene geſſerit. 14. E. 2. Grants 92.

be dwelling upon the Manor, this is good; or Quamdiu

And ſo be theſe words, Donec, Quouſque, Uſque ad, Tam diu, Ubicunque. 37. H. 6. 27.

¶ *Si l'un de eux devie*, &c. For if one of them dye, the coverture is diſſolved, and conſequently the ſtate determined by the limitation.

¶ *Ou que divorce ſoit fait enter eux.* &c. Here is a diſtinction to be underſtood: for there be two kinds of divorces, viz. one, à vinculo matrimonij, * and the other, A menſa & thora. Divortium dicitur a divertendo, or divortendo, quia vir divertitur ab uxore. Divorces A vinculo matrimonii are theſe: Cauſa Præcontractus, Cauſa Metus, Cauſa Impotentiæ ſeu Frigiditatis, Cauſa Affinitatis, Cauſa Conſanguinitatis, &c. And I read in an ancient Record, Coram Rege, Termino Paſch. 30. E. 1. William de Chadworths caſe, that he was divorced from his wife, for that he did carnally know her Daughter before he married the mother; all which are causes of divorce preceding the marriage. 10. Aſſ. 4. 6. E.8/9. 31. 3.E. 3.18. Annuity 40. 19. H. 6. 54. Temps E. 1. Annuity 130. 11. Aſſ. p.8. 21. Aſſ. p. 18. 26.E. 3. 69. 7.E.4.16.9.E. 4.25, 26. 9. H. 6. 39. 14.H. 8. 13. * 47.E. 3. 27, 29. E. 3. 32, 33. 11.H.4. 14. 76. Bracton fo. 298.

A menſa & Thoro, as Cauſa Adulterii, which diſſolveth not the marriage A vinculo Matrimonii, for it is ſubſequent to the marriage. And the Divorce that Littleton here ſpeaketh of is intended ſuch divorces as diſſolve the marriage A vinculo matrimonii, and maketh the iſſue baſtard, becauſe they were not Juſtæ nuptiæ. And therefore in Littletons caſe, though the husband and wife be divorced Cauſa Adulterii, yet the freehold continueth, becauſe the Coverture continueth. And it is further to be underſtood that many divorces that were of force by the common Law, when Littleton wrote are not at this day in force, for by the ſtatute of 32.H.8.ca.38. It is declared that all perſons be lawfull (that is may lawfully marry) that be not prohibited by the Leviticall degrees. A man marryed the daughter of the ſiſter of his firſt wife and was drawn in queſtion in the Eccleſiaſticall court for this marriage alledging the ſame to be againſt the Canons, and it was reſolved (n) by the court of Common pleas upon conſideration had of the ſaid ſtatute that the marriage could not be impeached, for that the ſame was declared by the ſaid act of Parliament to be good in as much as it was not prohibited by the Leviticall degrees, &c ſic de ſimilibus. 18. E. 4. 28. 24. H. 8. baſtards. Br. 44. 39 E. 1. baſtards. 21. 22. E. 4. tit Conſult. 5. 6. E. 3. 249. 25. E. 3. 39. (*) Vid. Sect. 399. 32. H. 8. cap. 38. (n) Trin. 2. Jac. rot. 1033. Richard Parſons, caſe.

Sect. 390.

¶ ET que ils ont eſtate pur terme de lour deux vies, Probatur ſic, cheſcun home que ad eſtate de franktenement en aſcun terres ou tenements, ou il ad eſtate en fee, ou en fee taile, ou pur terme de ſa vie demeſne, ou pur terme dauter vie, & per tiel leaſe ils ont franktenement, mes ils nont pur ceſt grãt fee, ne fee taile, ne pur terme dauter vie, Ergo ils ont eſtate pur terme de lour vies, mes ceo eſt ſur condition en ley, en le forme avantdit, & en ceſt cas ſils fieront waſt, le feoffor adera enders eux briefe de waſt

AND that they have an eſtate for term of their two lives, is proved thus; every man that hath an eſtate of freehold in any lands or tenements, either he hath an eſtate in fee, or in fee tail, or for term of his own life, or for term of another mans life, and by ſuch a leaſe they have a freehold: but they have not by this grant fee, nor fee taile, nor for term of anothers life, *Ergo*, they have an eſtate for term of their own lives; but this is upon condition in Law in form aforeſaid; and in this caſe, if they ſhall do waſt, the feoffor ſhall

ſuppoſant per ſon briefe, Quod tenet ad terminum vitæ, &c. mes en ſon count il declare coment & en quel maner l' leas fuit fait.

have a writ of waſte againſt them; ſuppoſing by his writ, *Quod tenet ad terminum vitæ, &c.* but in his count he ſhall declare how, and in what manner the leaſe was made.

Pl. Com. 381. b. Vid. Sect. 345. ſimile.

¶ *Probatur ſic.* By this argument logically drawn à diviſione, it appeareth, how neceſſary it is that our Student ſhould (as Littleton did) come from one of the Univerſities to the ſtudy of the Common law, where he may learn the liberal Arts, and eſpecially Logick: for that teacheth a man not only by juſt argument to conclude the matter in queſtion, but to diſcern between truth and falſhood, and to uſe a good method in his ſtudy, and probably to ſpeak to any legal queſtion, and is defined thus, Dialectica eſt ſcientia probabiliter de quovis themate diſſerendi; whereby it appeareth how neceſſary it is for our Student.

37 H. 6. 27.

¶ *Suppoſant per ſon briefe,* Quod tenet ad terminum vitæ, *&c.* This and the reſt of this Section is evident and plain.

Sect. 382.

Si un Abbe. So it is of a Biſhop, Arch-Deacon, and other Eccleſiaſtical, or temporal body, politique or Corporate, or of any Officer or Graduate, or the like.

¶ *Reſigne, ou ſoit depoſe.* And ſo it is of a Tranſlation and Ceſſion.

Vid. Bract. lib. 5. 414.

¶ En meſme la maner eſt, ſi un Abbe fait un Leaſe a un hõe, a aver & tener a luy durant le temps que le leſſor eſt Abbe, en ceſt caſe le Leſſee ad eſtate pur terme de ſa vie demeſme, mes ceo eſt ſur condition en ley, ſ. que ſi labbe reſigna, ou ſoit depoſe, que bien lirroit a ſon ſucceſſor dentrer, &c.

IN the ſame manner it is, if an Abbot make a leaſe to a man for years, to have and to hold to him during the time that the Leſſor is Abbot; in this caſe the leſſee hath an Eſtate for term of his own life: but this is upon condition in Law, s. That if the Abbot reſigne or bee depoſed, that then it ſhall be lawfull for his ſucceſſor to enter, *&c.*

Sect. 383.

¶ *LIVRE Daſſiſes* is a Book of the Reports of Caſes in the reigne of King Edward the third; and it is called the book of Aſſiſes, becauſe the greateſt part of the caſes therein are upon Writs of Aſſiſes, brought as hath been ſaid, and which hath been cited before.

¶ *Deviſa les Tenements a vendre per ſon Executor.* This muſt

¶ Item hõe poit beier en le Liure Daſſiſe, viz. anno 38. E. 3. p. 3. un pl' Daſſ. en ceſt forme que enſuiſt. ſ. Un Aſſiſe de Novel Diſſeiſin auter foits fuit port vers A. que pleda al Aſſiſe, & trove fuit per verdict, Que

ALſo a man may ſee in the Book of Aſſiſes, *Anno* 38. *E.* 3. *p.* 3. a plea of Aſſiſe in this form following, s. An Aſſiſe of *Novel Diſſeiſin* was ſometime brought againſt A. who pleaded to the Aſſiſe; and it was found by verdict, that

laun

launceſtor le plaintife deviſa ſes tenements a vendre per le Defendant que fuit ſon Executor, et de faire diſtribution des deniers pur ſon alm̃: Et fuit trove que maintenant apres la mort le Teſtator, un home luy rendiſt certain ſumme de deniers pur les Tenements, mes non pas al value, & que le Executor puis avoit tenus les Tenements en ſa main demeſne per deux ans, al entent de les vender pluis chier a alcun auter, & trove fuit q̃ il avoit tout temps pr̃iſt les profits de les Tenements a ſ̃ uſe demeſne ſans rien faire pur lalme le mort, &c. Moubray Juſtice diſoit, Lexecutor en tiel caſe eſt tenus p̃ la ley a faire le vender a pluis toſt que il purroit apres la mort ſon Teſtator, et trove eſt que il refuſe de faire vend̃, & iſſint il avoit un default en luy, & iſſint per force del deviſe il fuiſt tenus dañ mis touts le profits avenants de les Tenements al uſe l' mort & trove eſt que il ad

the Anceſtour of the Plaintiff deviſed his Lands to be ſold by the Defendant who was his Executor, and to make diſtribution of the money for his Soul. And it was found, That preſently after the death of the Teſtator, one tendred to him a certain ſum of money for the Lands, but not to the value, and that the Executor afterwards held the lands in his own hands two years, to the intent to ſell the ſame dearer to ſome other; and it was found that he had all the time taken the profits of the lands to his own uſe, without doing any thing for the Soul of the deceaſed, *&c. Moubray* Juſtice ſaid, The Executor in this caſe is bound by the Law to make the ſale as ſoon as he may after the death of his Teſtator, and it is found that he refuſed to make ſale, and ſo there was a default in him, and ſo by force of the Deviſe he was bound to put all the profits coming of the lands to the uſe of the dead, & it is found that he took them to his

be intended to be of Lands deviſable by Cuſtome; for lands by the Common Law were not deviſable, (as hath been ſaid;) for in this Section is implyed a diverſity, viz. when a man deviſeth that his Executor ſhall ſell the Land, there the lands deſcend in the mean time to the heir, and until the ſale be made, the heir may enter and take the profits. But when the Land is deviſed to his Executor to be ſold, there the deviſe taketh away the deſcent, and veſteth the ſtate of the Land in the Executor, and he may enter and take the profits, and make ſale according to the deviſe. And here it appeareth by our Author, That when a man deviſeth his tenements to be ſold by his Executors, it is all one as if he had deviſed his tenements to the Executors to be ſold: and the reaſon is, becauſe he deviſeth the tenements, whereby he breaks the Deſcent.

¶ *Moubray.* John Moubray was a reverend Judge of the Court of Common pleas, and deſcended of a noble Family.

¶ *Lexecutor en tiel caſe eſt tenus per la ley a faire le vender a pluis toſt que il purroit apres la mort ſon teſtator, &c.*

And the reaſon hereof is, for that the mean profits taken before the ſale, ſhall not be Aſſets, ſo as he may be compellable to pay debts with the ſame; therefore the Law will inforce him to ſell the Lands as ſoon as he can, for otherwiſe he ſhall take advantage of his own laches. But if a man deviſe that his Executor ſhall ſell his Land, there he may ſell it at any time, for that he hath but a bare power, and no profit. And by this caſe it appeareth what conſtruction the Law maketh for the ſpeedy payment of debts. And here is to be obſerved, That many

words in a Will do make a Condition in Law, that make no condition in a Deed: as here to devise lands to an Executor ad vendendum, so if lands be devised to one ad solvendum 23. l. to I. S. or paying twenty pounds to I. N. this amounts to a Condition. And Crickmers case was this: A man seised of certain lands holden in Socage had issue two Daughters, A. and B. and devised all his lands to A. and her heirs, to pay unto B. a certain sum of money at a certain day and place; the money was not paid, and it was adjudged, that these words, To pay &c. did amount in a Will to a Condition, and the reason was, for that the land was devised to A. for that purpose, otherwise B. to whom the money was appointed to be paid, should be remediless, Et interest reipublicæ suprema hominum testamenta rata haberi: and the Lessee of B. upon an actual Ejectment recovered the moiety of the land against A.

Mich. 31 & 32 El. in the Kings Bench. Crickmers Case adjudged, D. 6 E. 6. fol. 74. 7 E. 6. 76.

pryse a Sus ōmesne, & issint auter default en luy; Per que fuit adjudge que le plaintife recobera. Et issint appiert per le dit judgement, que per force del dit devise, lexecutor navoit Estate ne poyer en les Tenements, forsque sur condition in ley.

own use, and so another default in him. Wherefore it was adjudged, That the Plaintiff should recover. And so it appeareth by the said Judgement, That by force of the said Devise the Executor had no Estate nor power in the Lands, but upon condition in Law.

¶ *Et issint appiert per le judgement, &c.* This conclusion upon a Judgement is of great authority in Law, Quia judicium pro veritate accipitur, and, as it hath been said, Judicium is quasi juris dictum.

Sect. 384.

9 E. 4. 36.

¶ HEreby it appeareth that Limitations (which as hath been said, Littleton termeth Conditions in Law) may be pleaded without Deed, and the reason of our Author is observable, because the Law in it self purporteth the Condition, whereof somewhat hath been said before; and therefore look back to the Conditions in Law, or words of limitation, and withal, that a stranger may take advantage of a limitation, as hath been said.

Vid. Sect. 222.

Littleton having spoken at large of conditions in Deed and in Law, somewhat seemeth necessary to be said of defeasances whereby the state of right of Freehold or inheritance may be defeated and avoided.

¶ ET mults autres choses et cases y sont dessates sur conditiō en la ley, & en tiel cases il ne besoigne daver monstre aucun fait, rehearsant la condition pur ceo que la ley en luy mesm̄ purport le condition, &c.

Ex paucis dictis intendere plurima possis.

¶ Plus serra dit de Conditions en le prochein Chapter, en le Chapter de Releases, & en le Chapter de Discontinuance.

AND many other things there are of Estates upon Condition in Law, and in such cases he needed not to have shewed any Deed, rehearsing the condition, for that the Law it self purporteth the condition, &c.

¶ *Ex paucis dictis intendere plurima possis.*

More shall be said of Conditions in the next Chapter, in the Chapter of Releases, and in the Chapter of Discontinuance.

Bract. li. 2. fo. 16. 17 Ass. p. 2. 5 E. 3. 42 E. 3. 1. 43 E. 3. 17. 43 Ass. 12. 7 H. 6. 43. 8 H. 6. 23. 32 E. 3. Annu. 30. 5 E. 3. Annuity 44. 30 Ass. p. 1. 30 Ass. p. 11. 21 Ass. 32.

¶ *Defeasance*, Defeisantia is fetched from the French word Defaire, i. e. to defeat or undo, infectum reddere quod factum est. There is a diversity betwen Inheritances executed, and Inheritances executory; as lands executed by livery, &c. cannot by Indenture of Defeasance be defeated afterwards. And so if a Disseis release a Disseisor, it cannot be defeated by Indentures of Defeasance made afterwards; but at the time of the release or feoffment, &c. the same may be defeated by Indenture of Defeasance; for it is a Maxime in Law, Quæ incontinenti fiunt inesse videntur.

And

But Rents, Annuities, conditions, warranties and ſuch like that be Inheritances, executory may be defeated by Releaſances made, either at that time, or at any time after: And ſo the Law is of Statutes, Recognizances, Obligations, and other things Executory. 20 Aſſ. pl.7. 7 E.4.29. Browning and Beſtons caſe. Pl. Com. 131. 28 H.8. Dier 6. 27 H.8.15. 49 E.3. done 10. Albanies caſe lib.1.107.

¶ *Ex paucis dictis intendere plurima poſſis.*

Verſes at the firſt were invented for the help of memory; and it ſtandeth well with the gravity of our Lawyer to cite them. By this verſe of our Author, Inferences and Concluſions in like caſes are warrantable.

Laſtly, ſomewhat were neceſſary to be ſpoken concerning clauſes of proviſoes, containing Power of Revocation, which ſince Littleton were, are crept into voluntary Conveyances, which paſs by raiſing of uſes, being erected by the (*) Statute of 27 H. 8. and are become very frequent; and the Inheritance of many depend thereupon. As if a man ſeiſed of Lands in Fee, and having iſſue divers Sons, by Deed indented, covenanteth in conſideration of Fatherly love, and for the advancement of his Blood, or upon any other good conſideration, to ſtand ſeiſed of the Acres of Land to the uſe of himſelf for life, and after to the uſe of Thomas his eldeſt Son in tail; and for default of ſuch iſſue, to the uſe of his ſecond Son in tail, with divers like remainders over; With a Proviſo, that it ſhall be lawfull for the covenantor at any time during his life to revoke any of the ſaid uſes, &c. This Proviſo being coupled with an uſe, is allowed to be good, and not repugnant to the former Statutes. But in caſe of a Feoffment, or other Conveyance, whereby the Feoffee or Grantee, &c. is in by the common Law, ſuch a Proviſo were meerly repugnant and void. (*) 27 H.8. cap.10.

And firſt in the caſe aforeſaid; if the Covenantor, who had an eſtate for life do revoke the uſes according to his power, he is ſeiſed again in fee ſimple without entry or claim.

Secondly, he may revoke part at one time, and part at another.

Thirdly, if he make a Feoffment in fee, or levy a fine, &c. of any part, this doth extinguiſh his power but for that part, whereas in that caſe the whole Condition is extinct. But if it be made of the whole, all the power is extinguiſhed: So as to ſome purpoſes, it is of the nature of a condition, and to other purpoſes in nature of a Limitation. Lib.1. fol.173,174. Digges caſe. Lib.1. fol.107. Albanies caſe. Lib.10. fol.143. Scropes caſe. Lib.7. fol.12, 13. Sir Francis Engleſields caſe.

Fourthly, if he that hath ſuch power of revocation hath no preſent intereſt in the Land, nor by the Celler of the ſtate ſhall have nothing, then his Feoffment or fine, &c. of the Land is no extinguiſhment of his power, becauſe it is meer collateral to the Land.

Fifthly, by the ſame conveyance that the old uſes be revoked, many new be created or limited, where the former ceaſe ipſo facto by the revocation, without either entry or claim.

Sixthly, that theſe revocations are favourably interpreted, becauſe many mens inheritances depend on the ſame. And here I may apply the abovelaid verſe:

Ex paucis dictis intendere plurima poſſis.

Chap.6. *Diſcents que tollent Entries.* *Sect.* 385.

¶ Diſcents que tollent entries ſont en deux maners, ceſtaſcavoir; ou diſcent eſt en fee, ou en fee taile: Diſcents en fee que tollent entries ſont, ſicome home ſeiſie de certaine terres ou tenements eſt

Diſcents which toll entries are in two manners, to wit, where the deſcent is in fee, or in fee tail. Deſcents in fee which toll entries, are as if a man ſeiſed of certain lands or tenements is by another diſſeiſed, and the diſ-

Diſcents. This Word cometh of the Latine word deſcendere, id eſt, ex loco ſuperiore in inferiorem movere; and in Legal underſtanding it is taken when Land, &c. after the death of the Anceſtor is caſt by Courſe of Law upon the heir, which the law calleth a Deſcent. And this is the nobleſt and worthieſt meanes whereby Lands are derived from one to another, becauſe it is wrought and beſted by the Act of Law, and Mirror cap.4. Sect.3. Bract. l.5. fol.370. & 434. Britton, fol.115,215. Vide Sect.5.

Right of bloud, unto the worthieſt and next of the bloud and kindred of the Anceſtor; and therefore it hath not in the Common Law altogether the ſame ſignification that it hath in the Civil Law; for the Civilians call him Hæredem, qui ex teſtamento ſuccedit in univerſum jus teſtatoris. But by the Common Law he is onely Heir which ſucceedeth by right of bloud. And this agreeth well with the Etymologie of the word (Heir) to whom the lands deſcend, for Hæres dicitur ab hærendo, quia qui Hæres eſt hæret, hoc eſt, proximus eſt ſanguine illi cujus eſt Hæres. So as he that is Hæres, ſanguinis eſt Hæres, & herus hæreditatis.

pur un auter diſſeiſie, & le diſſeiſor ad iſſue & mozuſt de tiel eſtate ſeiſie, oze les tenements diſcend ont ale iſſue del diſſeiſor per courſe de la ley come heire a luy: Et pur ceo que la ley mitte les terres ou tenements ſur liſſue per force del diſcent, iſſint que liſſue vient a les tenements per courſe de ley, & nemy per ſon fait demeſne, lentrie le diſſeiſee eſt tolle, & il eſt mis de ſuer un briefe Dentre ſur diſſeiſin enbers le heire le Diſſeiſor, de recoverer la terre.

ſeiſor hath iſſue, and dieth of ſuch eſtate ſeiſed, now the Lands diſcend to the iſſue of the diſſeiſor by courſe of Law, as heir unto him. And becauſe the law caſt the lands or Tenements upon the iſſue by force of the deſcent; ſo as the iſſue cometh to the lands by courſe of law, and not by his own Act, the entry of the Diſſeiſee is taken away, and he is put to ſue a Writ of *Entrie ſine diſſeiſin* againſt the heir of the Diſſeiſor, to recover the land.

¶ *Diſcents que tollent entries ſons en deux Manners.* Here is an exact and perfect diviſion made by our Author, and yet withal plain and perſpicuous.

Now as a Deſcent is the worthieſt means to come to lands, &c. ſo hath the Heir more priviledges then any that by other order or means come to the Lands, &c. as ſhall appear hereafter.

(*) Bract. lib. 4. fol. 162. & 209. Britton fol. 115. Fleta lib. 4. cap. 2.
(a) 50 E. 3. 21. 1 Aſſ. 13. 20 H. 3 Aſſ. 432. 9 Aſſ. 15. 29 Aſſ. 54. 26 Aſſ. 12. 21 Aſſ. 28. 43 Aſſ. 17.
(b) Lamb. explicat. fol. 120. 70.

Nota. In ancient time (*) if the Diſſeiſor had been in long poſſeſſion, the Diſſeiſee could not have entred upon him. (a) Likewiſe the Diſſeiſee could not have entred upon the Feoffee of the Diſſeiſor if he had continued a year and a day in quiet poſſeſſion. But the law is changed in both theſe Caſes; onely the dying ſeiſed being an Act in law, doth hold at this day; and this ſeemeth to be very ancient, for this was the law before the Conqueſt. (b) Porro autem quam maritus ſine lite controverſia ſedem incoluerit, eam conjux & proles ſine controverſia poſſidento, ſi qua in illum lis fuerit illata viventem, eam hæredes ad ſe (perinde atque is vivus) accipiunto.

And one of the reaſons of this ancient Law may be, that the heir cannot ſuddenly by entendment of law, know the true ſtate of his Title. And for that many advantages follow the poſſeſſion and Tenant, the law taketh away the entry of him that would not enter upon the Anceſtor, who is preſumed to know his Title, and driveth him to his Action againſt the Heir that may be ignorant thereof.

11 H. 7. 12 40 E. 3. 24.

¶ *Et moruſt de tiel eſtate ſeiſie.* To a Deſcent that taketh away an entry, a dying ſeiſed is neceſſary, as here it appeareth; but a man to a other purpoſes may have lands by deſcent, though his Anceſtor died not ſeiſed, as hath been ſaid before.

33 E. 3. gard. 162. 6 H. 4. 4. 39 E. 3. 36. 15 E. 4. 14. F. N. B. 143. q. 7 H. 4. 12. 5. 2 Aſſ. 2. 9. 21 E. 3. 2.

¶ *Des terres ou tenements.* This is, of ſuch tenements as be corporal, and do lie in livery, and not of Inheritances, which lie in grant, as Advowſons, Rents, Commons in groſs, and ſuch like, which be Inheritances incorporeal, and yet are included within this word (tenements.) For Deſcents of them do not put him that right hath to an Action; and the reaſon of this diverſity is, for that houſes ſerve for the habitation of men; and lands to be manured for their ſuſtenance; and therefore the Heir after a Deſcent ſhall not be moleſted or diſturbed in them by entry.

¶ *Eſt per un auter diſſeiſie.* The like law is of an abatement or intruſion, and of their Feoffees or Doners, &c.

Upon the words of Littleton a diverſity may be collected, that if a recovery be had by A. againſt

againſt B. and before execution B. die ſeiſed, this Deſcent ſhall not take away the entry of the Recoverer. But if after execution B. had diſſeiſed the Recoverer, and died ſeiſed, this deſcent ſhall take away the entry of the Recoverer within the expreſſe words of Littleton; and ſo it is in caſe of a Fine. 33 E.3. tit. 3. Entrie cong. 51. 45 E.3. quare Imp. 139. 27 E.3.88. 9 H.6.49. 21 H.6.17. 3 E.4.6. 12 E.4.19. 3 H.7.3. 6 E.4.11. 7 H.7.15. 5 H.7.31. 10 H.7.5. b.

(n) A recovery is had againſt Tenant for life, where the remainder is over in fee. Tenant for life dieth, he in remainder entreth before execution, and dieth, the Entry of the Recoveror is lawful, becauſe he is privy in eſtate; otherwiſe it is if the Deſcent had been after execution. (n) 5 H.7.2.

A. Recovereth an advowſon againſt B. in a Writ of Right, and hath judgment final, the Incumbent dieth, C. by uſurpation preſents to the Church, and his Clerk is admitted and inſtituted, B. dieth; A. is put out of poſſeſſion, and the heir of B. is not ſo bound by the judgment either in blood or eſtate, but that he ſhall preſent, (o) B. levy a fine to A. of an advowſon to him and his heirs, after the Church becomes void B. preſents by uſurpation, and his Clerke is admitted and inſtituted, this ſhall put A. the Conuſee out of poſſeſſion. And the reaſon of theſe two caſes is, for that at the Common Law every preſentation to a Church did put the rightful Patron out of poſſeſſion, and did put him to his Writ of Right, whether the preſentation were by Title or without; and therefore albeit the uſurpation were in both the ſaid caſes before execution, yet it put the rightful Patron out of poſſeſſion. Do note a diverſity between a recovery of Land, and of an Advowſon. 45 E.3. quare imp. 139. (o) 8 E.2. quare imp. 166.

¶ *Lentrie le diſſeiſee tolle.* Here is not one of the priviledges which the Law giveth to the heir by deſcent of Houſes and Lands.

(p) If the Common Law if the Diſſeiſor, Abator, or Intruder, had died ſeiſed ſoon after the wrong done, the Diſſeiſee and his heirs had been barred of his and their entry without any time limited by Law; but now by the Statute (q) made ſince Littleton wrote, it is enacted, that except ſuch diſſeiſor hath been in the peaceable poſſeſſion of ſuch Mannors, Lands, &c. wherefore he ſhall die ſeiſed by the ſpace of five years next after ſuch diſſeiſin, &c. without entry or continual claim, &c. that there ſuch dying ſeiſed, &c. ſhall not take away the entry of ſuch perſon or perſons, &c. But after the five years the Diſſeiſee muſt take ſuch continuall claim, &c. as our Author hath taught us, the learning whereof is neceſſarry to be known. And it is ſaid that Abators and intruders are out of this Statute, becauſe the Statute is penal, and extends onely to a Diſſeiſor, and that was the moſt common miſchief. Et ad ea quæ frequentius accidunt jura adaptantur. (p) Leſtat de 32 H.8. cap. 33. Vide Sect. 422. 426. (q) 37 H.6.1. Pl. Com. 47. in Wimbiſhes caſe.

The Feoffee of a Diſſeiſor is out of the ſaid Statute, and remains as at the Common Law. But to a Diſſeiſor the Statute is taken favourably for advancement of the ancient right: for whether the diſſeiſin be without force, or with force, it is within the Statute. And albeit the Statute ſpeak of him that at the time of ſuch Deſcent had title of entry, &c. or his heirs, yet the ſucceſſors of bodies politique or Corporate, ſo you hold your ſelf to a Diſſeiſin, are within the remedy of this Statute; for the Statute extendeth clearly to the Predeceſſor being diſſeiſed; and conſequently without naming of his Succeſſor extendeth to him; for he is the perſon that at the time of ſuch Deſcent had title of entry. Mich. 4.8.5 Eliz. Dier 226. acc.

But if a man make a leaſe for life, and the Leſſee for life is diſſeiſed, and the Diſſeiſor die ſeiſed within five years, the leſſe for life may enter; but if he die before he doth enter, it is ſaid that the entry of him in the Reverſion is not lawful, becauſe his entry was not lawful upon the Diſſeiſor at the time of the Deſcent, as the Statute ſpeaketh. But if leſſee for life had died firſt, and then the Diſſeiſor had died ſeiſed, he in the reverſion had been within the remedy of the Statute; becauſe he had title of entry at the time of the deſcent, as the Statute ſpeaketh, and ſo within the expreſſe letter of the Statute, albeit the diſſeiſin was not immediate to him; and the like is to be ſaid of a remainder, &c. Vide Pl. Com. 47. ubi ſupra.

¶ *Brieſe dentrie ſur diſſeiſin.* Breve de ingreſſu ſuper diſſeiſinam. F. N. B. 191.
Of this Writ ſomewhat ſhall be ſaid in the next Section.

Sect. 386.

¶ Diſcents en tail que tollent entries ſont, ſicome home eſt diſſeiſie, & Deſcents in Tail which take away entries are, as if a man be diſſeiſed, and the

¶ *Morust de tiel eſtate ſeiſie.* If a Diſſeiſor make a gift in tail, and the Donee diſcontinueth in fee, and diſſeiſe the

the Diſcontinuee, and dieth ſeiſed, this deſcent ſhall not take away the entry of the Diſſeiſee; for the deſcent of the Fee ſimple is vaniſhed and gone by the Remitter; and albeit the iſſue be in by force of the eſtate tail, yet the Donee died not ſeiſed of that eſtate, and of neceſſity there muſt be a dying ſeiſed, as hath been ſaid, which is a point worthy of obſervation, and implieth many things.

le diſſeiſor dona, en la terre a un auter en le taile, & le tenant en le tail ad iſſue, & morust de tiel eſtate ſeiſie, & liſſue enter, en ceſt caſe lentre le diſſeiſee eſt tolle, & il eſt mis de ſuer envers liſſue de le tenant en taile un briefe Dentre ſur diſſeiſin.

diſſeiſor giveth the ſame land to another in tail, & the tenant in tail hath iſſue and dieth of ſuch Eſtate ſeiſed, and the iſſue enter; in this caſe the entry of the diſſeiſee is taken away, and he is put to ſue againſt the iſſue of the tenant in tail a writ of *Entrie ſur diſſeiſin.*

¶ *En ceſt caſe lentrie le diſſeiſee eſt tolle.*

9 H.7.24. If a diſſeiſor make a gift in taile, and the Donee hath iſſue and dieth ſeiſed, now is the entry of the Diſſeiſin taken away; but if the iſſue die without iſſue, ſo as the eſtate tail which deſcended is ſpent, the entry of the Diſſeiſee is revived, and he may enter upon him in the reverſion or remainder.

13 H.4.8,9. 33 H.6.5. b. per Moyle. 34 H.6.11. 2. per Curiam. Vide Sect.395. So if there be Grandfather, Father and Son, and the ſon diſſeiſed one, and intereſteth the Grandfather who dieth ſeiſed, and the land deſcendeth to the Father, now is the entry of the diſſeiſee taken away; but if the Father dieth ſeiſed, and the land deſcendeth to the Son, now is the entry of the Diſſeiſee revived, and he may enter upon the Son, who ſhall take no advantage of the deſcent, becauſe he did the wrong unto the Diſſeiſee. But in the caſe above ſaid, ſome have ſaid, that where after ſuch deſcent to the Father, he made a Leaſe to the Son, for term of another mans life upon whom the Diſſeiſee entred the Son brought an Aſſiſe and recovered, and the reaſon that hath been yielded is, for that the Son had not the Fee ſimple which he gained by diſſeiſin, but is a purchaſer of the Freehold onely from the Father, and the deſcent remains not purged. Contrary it were, as it is there ſaid, if the Son were heir to the deſcent. But the Book cited then in Fitzherb. tit. Title Placit. 6. doth not warrant that caſe; and I hold the Law to the Contrary, viz. that the Diſſeiſee in that caſe ſhall enter upon the Diſſeiſor, as well as if the Father had conveyed the whole Fee ſimple to the Son, for in that caſe alſo the deſcent to the Father is not purged. If a diſſeiſor make a Leaſe to an Infant for life, and he is diſſeiſed, and a deſcent caſt, the Infant enters, the entry of the Diſſeiſee is lawfull upon him. More ſhall be ſaid of the like matter, in this Chapter, hereafter, in his proper place. Sect. 393. 395.

13 E.3. Br. tit. Entrie Cong. 127.

¶ *Brieſe dentrie ſur diſſeiſin.* Breve de ingreſſu ſuper diſſeiſinam.

19 H.6.56. 9 H.5 9. This writ lieth onely upon a diſſeiſin made to the Demandant or to ſome of his Anceſtors, and of this Writ there be four kinds: The firſt is a Writ that lieth for the Diſſeiſee againſt the Diſſeiſor upon a diſſeiſin done by himſelf, and this is called a Writ of entry in the nature of an Aſſiſe. The ſecond is a Writ of Entrie ſur diſſeiſin en le Per, whereof Littleton here ſpeaketh; for the heir by deſcent is in the Per by his Anceſtor: ſo it is if the diſſeiſor maketh a feoffment in fee, a gift in tail, or a Leaſe for life, for they are in the Per by the Diſſeiſor. (*) The third is a Writ of Entry Sur diſſeiſin en le Per & Cui, as where A. being the Feoffee of D. the Diſſeiſor, maketh a feoffment over to B. there the diſſeiſee ſhall have a Writ of entry Sur diſſeiſin of Lands, &c. in which B. had no entry but by A. to whom D. demiſed the ſame, who unjuſtly and without judgment diſſeiſed the Demandant. Theſe are called Gradus, Degrees, which are to be obſerved, or elſe the Writ is abatable, for Sicut natura non facit ſaltum, ita nec lex.

Bracton lib.5. fol.219. b. & 318. Brit. fol.264,265. Fleta lib.5. cap.35. 5 E.3.216.

(*) 22 E.3. b. 7 E.3.25. F.N.B. 192.

The fourth is a Writ of Entrie ſur diſſeiſin in le poſt, which lieth when after a diſſeiſin, the land is removed from hand to hand beyond the degrees; and it is called in le poſt, becauſe the words of the Writ be Poſt diſſeiſinam, quam D. injuſte, &c. fecit, &c. the formes of theſe Writs you ſhall read in the Regiſter and F. N. B. and therefore it were needleſſe to recite them here. So then a degree is of two ſorts, either by act in Law, whereof Littleton here putteth an example of a deſcent, or by act of the party, by lawful conveyance, as is aforeſaid. But it is to be underſtood, that at the Common Law, if the lands were conveyed out of the degrees, the Demandant was driven to his Writ of right, in reſpect of ſuch long poſſeſſion in ſo many diverſe hands, which the Law doth ever reſpect and favour. And therefore by the Statute (a) of Marlebrige, the Writ of Entrie in le poſt giben, Proviſum eſt etiam, quod ſi

14 H.4.40.

(a) Marlebr. cap.29. 24 E.3.70.

ſi alienationes illæ de quibus breve de ingreſſu dari conſuevit, per tot gradus fiant, per quot breve illud in forma prius uſitata fieri non poſſit, habeant conquerentes breve ad recuperandam ſeiſinam ſuam ſine mentione graduum, ad cujuſcunque manus per hujuſmodi alienationes res illa devenerit, per breve originale, & per commune conſilium domini regis inde providendum, *&c.*

Now it is neceſſary to be known what doth make a degree. First, no eſtate gained by wrong doth make a degree, and therefore neither Abatement, Intruſion, or Diſſeiſin upon Diſſeiſin doth make a degree. Neither doth every change by lawful title work a degree; as if a Biſhop or an Abbot, or the like, diſſeiſe one and die, where his ſucceſſor is in by lawful title; for though the perſon be altered, yet the right remaineth where it was, viz. in the Church, and both of them ſeiſed in the ſame right, viz. in the right of the Church, and therefore in that very caſe Bracton demands the queſtion. An faciunt gradum de Abbate in Abbatem, ſicut de hærede in hæredem? Et videtur quod non magis quam in computatione deſcenſus, quia etſi alternetur perſona, non propter hoc alternatur dignitas, ſed ſemper manet. And herewith agreeth (c) Fleta.

Bracton ubi ſupra. Britton ubi ſupra. Fleta ubi ſupra. 4 E.2. bre. 790. 21 H. 6. 8.

(b) Bract. lib.4. fol. 321. 5 E. 3. 38. 5 E.2. Entry 66. 11 H. 4. 83.

(c) Fleta lib.5.cap.34.

Alſo an eſtate made to the King doth make no degree, and therefore if a Diſſeiſor by Deed inrolled convey the Land to the King, and the King by his Charter granteth it over, the Diſſeiſor cannot have a Writ of Entrie in le Per & Cui, but in le Poſt, for the Kings Charter is ſo high a matter of Record, as it maketh no degree.

3 E.3. Entry 11. 22 E. 3. 7. F.N.B. 191. k.

Alſo an eſtate of a Tenant by the courteſie, or of the Lord by Eſcheat, or of an execution of an uſe by the Statute of 27 H.8. or by judgment, or recovery, or of any others that come in the Poſt, work no degree. (d) But a tenancy in dower by Aſſignement of the heir, doth work a degree, becauſe ſhe is in by her husband, but Aſſignement of Dower by a Diſſeiſor worketh no degree, but is in the Poſt, as hereafter ſhall be ſaid in his proper place.

5 E.2. Entry 66. 7 E. 3. 360. (d) 36 H.6. Dower 38.

When the degrees are paſt, ſo as a Writ of Entry in the Poſt doth lie, yet by event it may be brought within the degrees again; as if the Diſſeiſor infeoffe A. who infeoffes B. who infeoffes C. or if the Diſſeiſor die ſeiſed, and the land deſcend to A. and from him to C. now are the degrees paſt, and yet if C. infeoffe A. or B. now it is brought within the degrees again.

44 E.3.4.5. 39 E.3.25. 5 H.7.6. 3 H.6.38.

If the Diſſeiſor make a leaſe for life, the remainder in fee; Tenant for life dieth, he in the remainder is in the Per, becauſe he now claimeth immediately from the Diſſeiſor, and both theſe eſtates make but one degree.

50 E. 3. 27.

Now there be divers other Writs of Entry beſides this Writ of Entry, Sur diſſeiſin, whereof Littleton here ſpeaks, as a Writ of Entry Ad terminum qui præteriit, in caſu proviſo, in conſimili caſu, ad communem legem, ſine aſſenſu capituli, dum fuit infra ætatem, dum non fuit compos mentis, cui in vita. Sur cui in vita, Intruſion, Ceſſavit, and the like; and that which hath been ſaid of one, may be applyed to all.

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¶ ET nota que en tiels diſcents, que tollent entries, il tovient que home mouſt ſeiſie en ſon demeſne come de fee, ou en ſon demeſne come de fee taile: Car un mouant ſeiſie pur terme de vie, ne pur terme dauter vie, ne unques tollent entre.

AND note, that in ſuch Deſcents which take away entries, it behoveth that a man die ſeiſed in his demeſne as of fee, or in his demeſne as of fee tail; for a dying ſeiſed for term of life, or for term of another mans life, doth never take away an entry.

¶ If the Diſſeiſor make a leaſe to a man and to his heirs during the life of I. S. and the Leſſee dieth, living I. S. this ſhall not take away the entry of the Diſſeiſee, becauſe he that died ſeiſed had but a Freehold only; and heirs in that caſe were added to prevent the Occupant, for the heir in that caſe ſhall not have his age, and it was adjudged in (d) Lambs caſe.

Dyer 8 El.2.253. 7 H.4.46. 8 H.4.15. 17 E.3.48. 12 H.4.42.

(d) Paſch. 16 Eliz. in Communi Banco.

But if he in the reverſion diſſeiſe his Tenant for life, and dieth ſeiſed, this deſcent ſhall take away the entry of the Tenant for life.

3 E.3. tit. Entr. Cong. 58. F.N.B. 145. m. 9 H.7.25. 2.

Doſt is, if there be Tenant for life, the remainder in tail, the remainder in fee, and Tenant in tail diſſeiſeth the Tenant for life and dieth ſeiſed, this ſhall take away the entry of the Tenant for life.

9 H. 7. 25.

But if the Kings Tenant for life be diſſeiſed, and the Diſſeiſor die ſeiſed, this deſcent ſhall not take away the entry of the Leſſee for life, becauſe the Diſſeiſor had but a bare eſtate of Freehold during the life of the Leſſee, and Littleton ſaith, that a deſcent of an eſtate for term of another mans life ſhall not take away an entry.

¶ *En ſon demeſne come de fee.* If an Infant be diſſeiſed, and the Diſſeiſor die ſeiſed,

Temps E. 1. Reliefe 12.
Dier 14 Eliz. 308.
40 E. 3. 29. b.
(*) 24. E. 3. 47.

ſeiſed, and after the Infant cometh to a full age, and the heir of the Diſſeiſor die before he entreth, albeit he died not ſeiſed of an actual ſeiſin, but of a ſeiſin in Law, yet that dying ſeiſed ſhall take away the entry of the Diſſeiſee. * And yet in pleading the ſecond heir ſhall (as hath been ſaid) make himſelf heir to the Diſſeiſor, and that land ſhall not be recovered in value for the Warranty made of other lands by the firſt heir; But though the firſt heir had but a ſeiſin in Law, yet he is within the words of Littleton, for he was ſeiſed and died ſeiſed in his demeſne as of Fee.

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¶ AND therefore if a Diſſeiſor make a Leaſe for years and die ſeiſed of the Reverſion, his deſcent ſhall take away the entry of the Diſſeiſee, becauſe he died ſeiſed of the Fee and Franktenement. Like Law it is, if the land be extended upon a Statute, Judgment, or Recogniſance; and ſo it is in caſe of a Remainder.

But if he had made a leaſe for life, and die ſeiſed of the reverſion, this deſcent ſhall not take away the entry of the Diſſeiſee, for that though he had the Fee, yet he had not the Franktenement.

Vid. Sect. 302, 393.

So it is of a Tenant in Tail, mutatis mutandis; and note, the Law doth ever give great reſpect to the Eſtate of Freehold, though it be but for term of life.

¶ Item un diſcent de reverſion, ou de Remainder, ne unques tollent entry: iſſint que en tiels caſes que tollent entries, per force de diſcents, il covient que celuy que mourſt ſeiſie ad Fee et Franktenement al temps de ſon mourant, ou Fee taile et Franktenement al temps de ſon mourant, ou autrement tiel diſcent ne tolle entre.

ALſo a Deſcent of a Reverſion, or of remainder, doth not take away an entry. So as in thoſe caſes which take away entries by force of Deſcents, it behoveth that he dieth ſeiſed of Fee and Freehold at the time of his deceaſe, or of Fee tail and Freehold at the time of his death; or otherwiſe ſuch Deſcent doth not take away an Entry.

If a Diſſeiſor make a leaſe for term of his own life, and dieth, this deſcent ſhall not take away the entry of the Diſſeiſee; for though the Fee and Franktenement deſcend to the heir of the Diſſeiſor, yet the Diſſeiſor died not ſeiſed of the Fee and Franktenement: and Littleton ſaith, That unleſs he hath the fee and franktenement at the time of his deceaſe, ſuch deſcent ſhall not take away the entry.

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¶ BY this it appeareth that a Deſcent in the Collateral Line doth take away an entry, as well as in the lineal.

¶ *Moront ſeiſie, &c.* Here (&c.) implyeth for ſimple, or fee tail.

¶ Item come eſt dit de Diſcents que diſcendont al iſſue de ceux que mouront ſeiſies, &c. Meme la Ley eſt lou ils nont aſcun iſſue, mes les Tenements diſcendont al frere, ſoer, uncle, ou auter coſin de celuy que mourſt ſeiſie.

ALſo as it is ſaid of deſcents which deſcend to the iſſue of them which die ſeiſed, &c. the ſame Law is where they have no iſſue, but the Lands deſcend to the Brother, Siſter, Uncle, or other Couſin of him which dieth ſeiſed.

Sect.

Sect.390.

¶ ITem ſi ſoit Seignior & tenant, & le Tenant ſoit diſſeiſie, & le diſſeiſor aliena a un auter en fée, & lalienée debie ſans heire & le Seignior enter come en ſon eſcheat; en ceſt caſe le Diſſeiſée poit entrer ſur le Seignior, pur ceo que le Seignior ne vient a le Terre per diſcent, mes per voy deſcheat.

ALſo if there be Lord and Tenant, and the tenant be diſſeiſed, and the Diſſeiſor alien to another in Fee, and the Alienee die without iſſue, and the Lord enter as in his Eſcheat. In this caſe the Diſſeiſee may enter upon the Lord, becauſe the Lord cometh not to the Land by Deſcent, but by way of Eſcheat.

¶ *LE Diſſeiſee poit enter ſur le Seignior*, &c. For albeit the alienee of the Diſſeiſor die ſeiſed, and the Lord by Eſcheat cometh to the Land by Act in Law, yet becauſe the Land deſcendeth not to him, the entrie of the Diſſeiſée in reſpect of the Eſcheat ſhall not be taken away. For a dying ſeiſed and a Deſcent, and not a dying ſeiſed and an Eſcheat, doth take away the entry: for (as hath been ſaid) the Deſcent is the worthier title. But in that caſe if the Lord by Eſcheat die ſeiſed, and the Land deſcend to his heire, that Deſcent ſhall take away the entry of the Diſſeiſee. So it is if the Diſſeiſor die ſeiſed, and the Heire of the Diſſeiſor dieth without heir, the Diſſeiſee cannot enter upon the Lord by Eſcheat. So as there is a diverſity as touching the Deſcent, when after a deſcent caſt, the Iſſue in taile dieth without Iſſue, and when after a Deſcent caſt, the Heire in fee ſimple dieth without Heire, for he in the Reverſion, or Remainder, or one upon the ſtate taile claimeth in above the ſtate taile, and the Lord by Eſcheat claimeth in under the Heire in Fee ſimple. 37 H.8.1.9 E.7.24.b.

Sect. 391.

¶ ITem ſi home ſeiſie de certaine Terre en Fée, ou en Fée taile, ſur condition de render certaine rent, ou ſur auter condition, comẽt que tiel Tenant ſeiſie en fée, ou en fée taile, mozuſt ſeiſie, uncoze ſi le condition ſoit enfreint en lour vies, ou apzes lour deceaſe, ceo ne tollera pas lentry del Feoffoz, ou del Donoz, ou de lour heires, pur ceo que le Tenancie

ALſo if a man be ſeiſed of certain Land in fee, or in Fee taile, upon condition, to render certain rent, or upon other condition, albeit ſuch Tenant ſeiſed in Fee or in Fee Taile, dyeth ſeiſed, yet if the condition be broken in their lives, or after their deceaſe, this ſhall not take away the entry of the Feoffor or Donor, or of their heires, for that the Tenancie is char-

¶ UPon theſe two Sections is to be obſerved a diverſity between a right, for the which the Law giveth a remedy by Action, and a title, for the which the Law giveth no remedy by Action, but by entry onely. For example, The Feoffor upon Condition in this caſe hath a right to the land, and therefore his entry may be taken away, becauſe he may recover his right by Action; but the Feoffor or Donor that hath but a Condition, his title of entry cannot be taken away by any Deſcent, becauſe he hath no remedy by Action to recover the land: and therefore if a Deſcent ſhould take away his entry, it ſhould barre him for ever. And the Law is all one whether the Deſcent were before the condition broken, or after. 33.Aſſ.11.24.41 H.8.17. 33. Aſſ. 11.24.

Alſo

Brook. tit. Mortmaine 6. 47. E. 3. 11. 21, E. 3. 17.

Alſo he that hath a title to enter upon a Mortmain, ſhall not be barred by a deſcent, becauſe then he ſhould be without all remedy. And ſo it is in caſe where a woman that hath a title to enter, Cauſa matrimonii prælocuti, no deſcent ſhall take away her entry, becauſe ſhe hath but a title, and no remedy by Action.

40. Aſſ. 13.

If a man be ſeiſed of Lands in fee, and by his laſt will in writing deviſeth the ſame to another in fee, and dieth, after whoſe deceaſe the Freehold in Law is caſt upon the deviſee, and the heire before any entry, made by the Deviſee, entereth, and dieth ſeiſed, this ſhall not take away the entry of the Deviſee, for if the Deſcent which is an act in Law, ſhould take away his entry, the Law ſhould barre him of his right, and leave him utterly without remedy. And ſo it is for him that entreth for conſent to a raviſhment, and ſo it was reſolved in the caſe of Martin Trotie of London (n) Paſchæ 32. Eliz. in Com Banco. And accordingly was the opinion of the Court of Common pleas, (o) Paſch. 1. Jac. Reg. To this may be added as a like caſe, the Kings Patentee before he enter, &c. Another reaſon wherefore a deſcent ſhall not take away the entry of him that hath a title to enter by force of a condition, &c. is, for that the condition remaines in the ſame eſſence that it was in at the time of the creation of it, and cannot be deveſted or put out of poſſeſſion as lands and tenements may,

(n) Paſch. 32. Eliz. in Communi Banco. 7. R. 2. Seir. Fac. 2. 41. E. 3. 14. per Finchden.

(o) Paſch. 1. Jac. Regis in communi Banco.

¶ Item ſi tiel Tenant ſur condic ſoit diſſeiſie & le diſſeiſor devie ent ſeiſie, & la tenc deſcendiſt al heir le diſſeiſor, ore le entry le tenant ſur condition, q̄ fuiſt diſſeiſie eſt toll: Mes uncore ſi le conditiõ ſoit enfreint, donq̄ poit le Feoffor ou le Donor q̄ fierēt eſtate ſur condition, ou lour heires enter, Cauſa qua ſupra.

Sect. 392.

Alſo if ſuch Tenant upon condition be diſſeiſed, and the Diſſeiſor die thereof ſeiſed, and the land deſcend to the Heire of the Diſſeiſor, now the entry of the Tenant upon Condition, who was diſſeiſed, is taken away. Yet if the Condition be broken, the Feoffor or the Donor which made the eſtate upon Condition, or their heires, may enter, *Cauſa qua ſupra.*

¶ *Devie ſeiſie*, &c. viz. in fee ſimple, or in fee taile.

¶ *Et ſon heir enter* &c. So as he hath an actual fee ſimple.

¶ *De la* 3. *part de les tenements*, &c. id eſt, in ſeverality.

By this Section it appeareth, that an entry being taken away by the Deſcent, is revived by the endowment, albeit the Tenant in Dower ſhall have it but for her life. And the cauſe, is, for that although the heire entred, yet

Sect. 393.

¶ Item ſi un diſſeiſor devie ſeiſie, &c. & ſon heire enter, &c. le quel endowa la feme le diſſeiſor d̄ la tierce part d̄ les tenements, &c. En ceſt cas quant a ceſt tierce part que eſt aſſigne a la feme en dower maintenant apres ceo que la feme enter, & ad l'

Alſo if a Diſſeiſor die ſeiſed, &c. and his heire enter, &c. who endowes the wife of the Diſſeiſor of the third part of the Land, &c. In this caſe as to this part which is aſſigned to the wife in Dower, preſently after the wife entreth and hath the poſſeſſion of the ſame third

poſ-

poſſeſſion de meſme la tierce part, le diſſeiſee poit loyalment enter ſur la poſſeſſion la feme en meſme la tierce part. Et la cauſe eſt, pur ceo que quant la feme ad ſon dower, el ſerra adjudge eins immediate per ſon baron, & nemy per le heire, & iſſint quant a le franktenement de meſme la tierce part, le Diſcent eſt defeate. Et iſſint poies veir, que devant le endowment le diſſeiſee ne poit enter en aſtun part, &c. & apres lendowment il poit enter ſur la fee, &c. mes uncore il ne poit enter ſur les auters deux parts que l'heire le Diſſeiſor ad per le Diſcent.

part, the diſſeiſee may lawfully enter upon the poſſeſſion of the Wife into the ſame third part. And the reaſon is, for that when the Wife hath her dower, ſhe ſhall be adjudged in immediately by her husband and not by the Heir. And ſo as to the Freehold of the ſame third part, the Deſcent is defeated. And ſo you may ſee that before the endowment the Diſſeiſee could not enter into any part, &c. and after the endowment he may enter upon the wife, &c. but yet he cannot enter upon the other two parts which the Heir of the Diſſeiſor hath by the Deſcent.

when the Wife is endowed ſhe ſhall not be in by the heir, (a) but immediately by her Husband being the diſſeiſor, who is in for her life by a Title Paramount the dying ſeiſed and Deſcent; and therefore in judgement of Law, the deſcent as to the Freehold, and the poſſeſſion which the heir had, is taken away by the endowment, for that the Law adjudgeth no mean ſeiſin between the Husband and the Wife. (a) 8 E.2. Entry 75. 19 E.2. Dower 171. 5 E.2. Entr. 66. 24 E.3.32.40. 38 Aſſ. Pl. 26. 43 E.3.32. 45 E.3.9. b. 11 H.4.11. 7 H.5.3. 10 E.3. 27,28. 36 H.6. Dower 30.

If there be Lord, Miſne and Tenant, the Miſne doth grant to the Tenant to acquit him againſt the Lord and his Heirs; the Lord dies, his wife hath the Seigniory aſſigned to her for her power, and diſtreines the Tenant; albeit the grant was to acquit him againſt the Lord and his Heirs, onely; yet becauſe ſhe continues the eſtate of her husband, and the reverſion remained in the heir, this Grant of acquital did extend to the wife; which is a notable caſe. 31 E.1. Meſne 55.

If after the dying ſeiſed of the Diſſeiſee, the Diſſeiſee abate, againſt whom the wife of the Diſſeiſor recover by confeſſion in a writ of dower, in that caſe, though the Deſcent be avoided as Littleton here ſaith, yet the Diſſeiſee ſhall not enter upon the Tenant in dower, becauſe the recovery was againſt himſelf; but if he had aſſigned Dower to her in pais, ſome ſay he ſhould enter upon her.

A man makes a gift in tail, reſerving twenty ſhillings Rent, and dies, the Donee takes Wife and dieth without Iſſue; the heir of the Donor entreth and endoweth the Wife; ſhe is ſo in of the eſtate of her husband, that albeit the eſtate tail be ſpent, and the Rent reſerved thereupon determined, yet after ſhe be endowed, ſhe ſhall be attendant to the heir in reſpect of the ſaid Rent. And ſo it is of Lord and Tenant, the Wife that is endowed; ſhall be attendant for the due Services, but if any Services be encroached, albeit that encroachment ſhall bind the heir, yet the Wife ſhall be contributary, but for the ſervices of right due. 10 E.3.26.

¶ *Iſſint poies veir que devant lendowment le diſſeiſee ne poit enter, & apres lendowment il poit enter, &c.* The like hath been ſaid before in this Chapter, Sect. 386. where the entry of the Diſſeiſee may be taken away for a time, and by matter ex poſt facto.

Nota, albeit the Diſſeiſor after a Deſcent taketh to him but an eſtate for life, yet when the Diſſeiſee doth enter upon him, he ſhall thereby deveſt the reverſion, for the eſtate of Freehold is that whereupon a Præcipe doth lie, and therefore the entry of the Diſſeiſee, is as availeable in Law, as if he had recovered it in a Præcipe. And ſo it is, if a Diſſeiſor make a leaſe for life, and grant the reverſion to the King, the entry of the Diſſeiſee upon the Tenant for life, ſhall devеſt the Reverſion out of the King in the ſame manner, as if the Diſſeiſee had recovered the lands againſt the Tenant for life in a Præcipe. Vide Sect. 302. 388. 25 E.3.48. Pl. Com. 353.

Sect. 394.

¶ *En ceſt caſe jeo poy enter ſur le poſſeſſion liſſue, &c.*

Vide 9 H. 7. 24. & 37 H. 6. 1.

For here was but a Deſcent of a Reverſion at the time of the dying ſeiſed; for the eſtate of a Tenant by the courteſie had commencement by the having of iſſue, and is conſummate by the death of the wife, ſo as the fee & franketenement did not after the deceaſe of the wife deſcend to the Heir, and albeit the Tenant by the Courteſie dieth afterwards, and that the frankетenement is caſt upon the Heir, ſo as now he hath the Fee and frankетenement by Deſcent, yet becauſe the Heir came not to the Fee and frankетenement at once immediately after the deceaſe of the wife, ſuch a mediate Deſcent ſhall not take away the entry of the Diſſeiſee. On the other ſide, an immediate deſcent may take away an entry for a time, and mediately may be avoided by matter ex poſt facto, as hath been ſaid.

See before the Chapter of Homage.

¶ Item, ſi un feme ſoit ſeiſie de terre en Fee, dont jeo aye droit & title dentre, ſi la feme prent baron, & ont iſſue enter eux, en puis la feme devie ſeiſie, & apres le baron devie, & iſſue enter, &c. en ceſt caſe jeo poy enter ſur le poſſ. iſſue, pur ceo q̄ iſſue ne vient a les teneñts immediate per Deſcent apres la mort ſa mere, &c. eins per le mort del pier.

¶ Contrarium tenetur P. 9 H. 7. per tout le Court, & M. 37 H. 6. ¶.

Alſo if a woman be ſeiſed of land in fee, whereof I have right and title to enter, if the woman take huſband and have iſſue between them, and after the wife die ſeiſed, and after the huſband die, and the iſſue enter, &c. In this caſe I may enter upon the poſſeſſion of the iſſue, for that the iſſue comes not to the Lands immediately by Deſcent after the death of the mother, &c. but by the death of the father.

¶ *Contrarium tenetur P. 9 H. 7. per tout le court, & M. 37 H. 6.* ¶.

But if a dying ſeiſed taketh not away the entry of him that right hath at the time of the Deſcent, it ſhall not by any matter ex poſt facto take away his entry.

If a Diſſeiſor die without Heir, his Wife prædement enſeint with an iſſue, and after the iſſue is born who entreth into the Land, he hath the Land by Deſcent; and yet thereby the entry of the Diſſeiſee ſhall not be taken away, becauſe as Littleton here ſaith, the iſſue cometh not to the Lands immediately by Deſcent after the deceaſe of the Father.

And ſo it is if a Diſſeiſor make a gift in tail, the remainder in fee, and the Donee dieth without iſſue leaving his wife prædement enſeint with a Son, and he in the remainder enters, and after the Son is born, who entreth into the Land, this Deſcent ſhall not take away the entry of the Diſſeiſee. Cauſa qua ſupra.

¶ *Contrarium tenetur, &c.* This is an addition, and therefore to be paſſed over. And at this day this caſe of Littleton is holden for clear Law.

Sect. 395.

¶ Item, ſi un diſſeiſor enfeoffa ſon pier en fee, & le pier morust de tiel eſtate ſeiſie, per que les teñts diſcendont a le diſſeiſor come fits & heire, &c. en ceſt caſe le diſſeiſee bien poit enter ſur le diſſeiſor, nient obſtant le Deſcent.

Alſo if a Diſſeiſor infeoffe his father in fee, and the father die ſeiſed of ſuch eſtate, by which the Land deſcend to the Diſſeiſor, as ſon and heir, &c. In this caſe the Diſſeiſee may well enter upon the Diſſeiſor, notwithſtanding the

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pur ceo que quant al diſſeiſin, le diſſeiſor ſerra adjudge eins forſque come diſſeiſor, nient obſtant le diſcent, Quia particeps criminis.

Deſcent for that as to the Diſſeiſin, the Diſſeiſor ſhall be adjudged in but as a Diſſeiſor, notwithſtanding the Deſcent, *Quia particeps criminis.*

¶ Of this ſufficient hath bœn ſaid before in this Chapter, Sect. 386. And regularly it is true, that albeit a Deſcent be caſt, and the entry of the Diſſeiſee taken away, yet if the Diſſeiſor cometh to the land again, either by deſcent, or purchaſe of any eſtate or Fœehold, which is implyed in the (&c.) the Diſſeiſee may enter upon him, or have his aſſiſe againſt him, as if no deſcent or mean conveyance had bœn, Quia particeps criminis. 15 E.4 23.2. 11 E.4 2. 18 E.4.25.2. 33 H.6.5.b. 34 H.6.11. 12 H.8.9. 24 H.8.3.9. 18 H.8.5. 5 H.7. 29 Aſſ. 54. 39 E.3.25,26.

Sect. 396,397.

¶ Item ſi home ſeiſie de certeine terr̃ en fee ad iſſue deux fits, & mozuſt ſeiſie, & le puiſne fits entra p abatement en la terre, quel ad iſſue, & de ceo mozuſt ſeiſie, & les tenements diſcendont al iſſue, & l' iſſue entra en la terre, en ceſt caſe le fits eigne, ou ſõ heire, poit enter p la ley ſur liſſue del fits puiſne, nient contriſteant le diſcent, pur ceo que quant le fits puiſne abatiſt en la terr̃ apres l' mozt ſon pier devant aſcun entrie per le fits eign fait, la ley intendza que il entra enclaymant come heire a ſon pier, & pur ceo q̃ leigne fits clayma per meſme le title, ceſtalcavoir, come heire a ſon pier, il & ſes heires poient enter ſur liſſue de puiſne fits, nient obſtant le diſcent, &c. pur ceo que ils clay-

ALſo if a man ſeiſed of certain land in fee have iſſue two ſons, and die ſeiſed, and the younger ſon enter by abatement into the land, and hath iſſue, and dieth ſeiſed thereof, and the land deſcend to his iſſue, and the iſſue enters into the Lands; in this caſe the eldeſt ſonne or his Heir may enter by the Law upon the iſſue of the younger ſon notwithſtanding the Deſcent, becauſe that when the younger ſon abated into the land after the death of his Father, before any entry made by the eldeſt ſon, the Law intend that he entred claiming as heir to his Father. And for that the eldeſt ſon that claims by the ſame title, that is to ſay, as Heir to his Father, he and his Heirs may enter upon the iſſue of the younger ſon, notwithſtanding the diſ-

¶ *EN ceſt caſe le fits eigne, &c. poit entrer ſur liſſue del fitz puiſne, &c.*

And the reaſon hereof is, for that the Law intendeth the youngeſt ſon entred claiming the Land as Heir to his Father; and becauſe the eldeſt Son claimeth alſo by the ſame title. viz. as Heir to his Father, therefore he and his heirs may enter upon the ſecond Son and his Heirs, in reſpect of the priority of the bloud betwixt them, and of the ſame claim by one title, albeit the youngeſt Son gained a fee ſimple by his entry; for Littleton here calleth it an Abatement, which proveth the gaining of a fee ſimple.

And it is to be obſerved, that, Aſſiſa mortis anteceſſoris non tenet inter conjunctas perſonas ſicut fratres & ſorores, &c. For theſe are privy in bloud; but it lieth againſt ſtrangers, and then damages are to be recovered againſt a ſtranger, but not againſt his brother. Brac. lib.4. fo.261. 282, 283. Britton fol.180. 181. Fleta lib.5. cap.1,2,&c. 20 E.3. Darr. preſent. 13. 12 H.3. Mord.pl.ultim. 13 E.1. Mord. 47. 29 Aſſ.11. F.N.B. 196. B.

Lands were given to the Husband and Wife, and to the heirs of their two bodies, they had iſſue a Daughter, the wife died, the Husband had iſſue by another Wife four Sons and died, the eldeſt Son Paſch. 3 E.3. Coram Rege Canc. in Theſaur.

abated and dyed ſeiſed, this Deſcent did take away the Entry of the Daughters, becauſe they claimed not by one title. And in ancient Books an eldeſt ſonne is called Hæres propinquus, and the younger ſonne Hæres remotus. And albeit the eldeſt ſonne hath iſſue and dieth, and that after his deceaſe the youngeſt ſonne or his heir entreth, and many deſcents be caſt in his line, yet may the heirs of the eldeſt Son enter in reſpect of the priority of the bloud, and of the ſame claim by one title; but if the youngeſt Son make a feoffment in fee, and the Feoffee die ſeiſed, that Deſcent ſhall take away the entry of the eldeſt, in reſpect that the priority of the bloud faileth. And albeit that the youngeſt Son be of the half bloud to his brother, yet he is of the whole bloud to his father; and therefore if he entreth by abatement, and dieth ſeiſed, it ſhall not bar his elder brother of his entry. But if the eldeſt Son entreth, and gaineth an actual poſſeſſion and ſeiſin, then the entry of the youngeſt is a diſſeiſin. And then a dying ſeiſed ſhall take away the entry of the eldeſt, for Poſſeſſio terræ muſt be Vacua when the youngeſt ſon enters by abatement, as Littleton ſaith, becauſe he hath more colour in that caſe to claim, as heir to his father, who laſt was actually ſeiſed. Therefore if after the deceaſe of the father, an eſtranger doth firſt enter and abate upon whom the youngeſt Son entreth and diſſeiſe him and die ſeiſed; this Deſcent ſhall bind the eldeſt, for he entred by diſſeiſin, and not by abatement.

8 E. 2 Aſſ. 380.
40 E. 3. 24. b. 29 Aſſ. 24.

Vid. Brook, tit. Entry 27.

If a man be ſeiſed of Lands of the nature of

mont per un meſme title. Et en meſme le manner il ſerra, ſi fueront pluſors diſcents de un iſſue a un auter iſſue del puiſne fits.

ſcent, &c. becauſe they claim by the ſame title. And in the ſame manner it ſhall be, if there were more deſcents from one iſſue to another iſſue of the youngeſt ſon.

Sect. 397.

¶ MES en tiel caſe, ſi le pier fuit ſeiſie de certeine terres en fee, & ad iſſue deux fits & devie, et leigne fits enter, & eſt ſeiſie &c. & puis le puiſne frere luy diſſeiſiſt, p̄ q̄l diſſeiſin il eſt ſeiſie en fee, & ad iſſue. & de tiel eſtat mozuſt ſeiſie donques leigne frere ne poit entrer, mes eſt mis a ſon briefe Dentre ſur diſſeiſin, &c. de recoverer la terre. Et la cauſe eſt, pur ceo que le puiſne frere vient a les tenements p̄ tortious diſſeiſin fait a ſon eigne frere, & per tel tozt la Ley ne poit intender que il claim come heire a ſon pier, mient pluis que un eſtrange perſon que uſt diſſeiſie leigne frere q̄ navoit aſcun title, &c. Et iſſint poyes veier la diverſity, lou le puiſne frere enter apres le mozt le pier devant aſcun entrie fait per leigne frere en tiel cas, & ou leigne

BUT in this caſe if the Father were ſeiſed of certain lands in Fee, and hath iſſue two ſons and die, and the eldeſt ſon enter and is ſeiſed, &c. & after the younger brother diſſeiſeth him, by which diſſeiſin he is ſeiſed in fee, and hath iſſue, and of this eſtate dieth ſeiſed, then the elder brother cannot enter, but is put to his Writ of *Entrie ſur diſſeiſin, &c.* to recover the land. And the cauſe is, for that the youngeſt brother cometh to the lands by wrongful diſſeiſin done to his elder brother; and for this wrong the Law cannot intend that he claimeth as Heir to his Father, no more then if a ſtranger had diſſeiſed the elder brother which had no title, &c. And ſo you may ſee the diverſity where the younger brother entreth after the death of the Father, before any entry made by the elder brother in this

frere

frere enter apres la mort ſon pier, & puis eſt diſſeiſie pur le puiſne frere, ſon le puiſne fret puis mort ſeiſie.

caſe, and where the elder brother enters after the death of his father, and after is diſſeiſed by the younger brother, where the younger after dieth ſeiſed.

Burgh Engliſh, and hath iſſue two ſons, and dis, and the eldeſt ſon before any entry made by the youngeſt, entreth into the Land by abatement, and dieth ſeiſed; this ſhall not take away the Entry of the youngeſt Brother, Et ſic de ſimilibus. And theſe and the like caſes are all within the reaſon and rule of our Author. And where our Author ſpeaketh onely of an abatement, ſo it is of an intruſion; For if the Father make a leaſe for life, and hath iſſue two ſons and dieth, and the Tenant for life dieth, and the youngeſt ſon intrude, and die ſeiſed, this Deſcent ſhall not take away the entry of the eldeſt. But if the the Father had made a leaſe for years, it had been otherwiſe, for that the poſſeſſion of the leſſee for years maketh an actual Freehold in the eldeſt ſon. And it is to be obſerved, that the reaſon of Littleton in this caſe (for that both the brethren hold by one title) holdeth alſo in many other caſes.

If two Coparceners make partition to preſent by turn, and one of them uſurp in the turn of the other, this uſurpation ſhall not put the other out of poſſeſſion, becauſe they claim by one title. 22 E.4.4.

If two Coparceners be, and they ſeverally preſent to the Ordinary, yet the Church is not litigious, becauſe they claim all by one title. Doct. & Stud. cap.30.fol.117.

If upon a Writ of Diem clauſit extremum, the youngeſt ſon be found heir, the eldeſt ſon had no remedy by the Common Law, becauſe they claimed by one title, but otherwiſe it is if they claim by ſeveral titles, as it appeareth in our Books. But this is now holpen by a (*) Statute made ſince Littleton wrote. 12 E.4.18. (*) 2 E.6. cap.8. 2 H.7.12. a.

If two Parſons be in debate for tithes, which amount to above the fourth part, and one man is Patron of both Churches, no Judicavit doth lie: for that both Incumbents claim by one and the ſame Patron, Et ſic de ſimilibus. See the Section next following.

And where Littleton ſaith, ſeiſed of lands in Fee, the ſame Law it is if a man be ſeiſed of lands in tail, and hath iſſue two ſons, Mutatis mutandis.

¶ *Et eſt ſeiſie, &c.* That is to ſay, actually ſeiſed, either by entry, as Littleton here putteth it, or by poſſeſſion of the Leſſee for years, or the like.

¶ *Navoit aſcun title, &c.* That is to ſay, any pretence or ſemblance of title, as the younger brother here hath, and in many other caſes, there is a great diverſity holden in our Books (o) where one hath a colour or pretence of right, and when he hath none at all, whereof you may read plentifully in our Books. (o) 1 E.2. baſtardy 19. 21 E.3.34. 22 Aſſ.85. 39 E.3.26. 17 E.3.59. 11 E.3. Aſſ.88. 21 H.6.14. 11 E.3. age.3. Vide Sect. 402. & cap. Garran.

Sect. 398.

¶ EN meſme le maner eſt, ſi home ſeiſie de certain tre en fee ad iſſue deux files & devie, leigne file entra en la terre claymant tout la terre a luy, & ent ſolement prift les profits & ad iſſue & mort ſeiſie, per que ſon iſſue enter, quel iſſue ad iſſue & devie ſeiſie, & le ſecond iſſue enter, & ſic ultra, untore le puiſne file ou ſon iſſue, quant a le moietie poit enter ſur quecunque iſſue de leigne file, nient obſtant tiel

IN the ſame manner it is, if a man ſeiſed of certain Land in fee, hath iſſue two daughters and dieth, the eldeſt daughter entreth into the Land, claiming all to her, and thereof onely taketh the profits, and hath iſſue and dieth ſeiſed, by which her iſſue enter, which iſſue hath iſſue and dieth ſeiſed, and the ſecond iſſue enter, *& ſic ultra*; yet the younger daughter or her iſſue as to the moiety may enter upon any iſſue whatſoever of the

diſcent pur ceo que ils claimont per un meſme title, &c. mes en tiel caſe; ſi ambideux Soers avoyent enter apres la mort lour Pier, & ent fueront ſeiſies, & puis leigne Soer uſt diſſeiſie la puiſne Soer de ceo que a luy affiert, & ent fuit ſeiſie en fee & ad iſſue, & de tiel eſtate morust ſeiſie, per que les Tenements diſcendont al Iſſue del eigne Soer, donque le puiſne Soer, ne ſes heires ne poient enter, &c. Cauſa qua ſupra, &c.

elder daughter notwithſtanding ſuch diſſent, for that they claim by one ſame title, &c. but in ſuch caſe where both ſiſters have entred after the death of their father, and were thereof ſeiſed, and after the eldeſt ſiſter had diſſeiſed the younger of her part, and was thereof ſeiſed in Fee, and hath Iſſue, and of ſuch Eſtate dieth ſeiſed, whereby the lands deſcend to the Iſſue of the elder ſiſter, then the younger ſiſter nor her heirs cannot enter, &c. *Cauſa qua ſupra, &c.*

21 Aſſ.19. 21 E.3.7.27.32. 26 Aſſ.2. 27 Aſſ 68. 36 Aſſ. p.1. 43 E.3.19 4 H.7.10. 16 H.7.4.

¶ *Claimont tout la terre.* Here it appeareth, That when the one Coparcener doth ſpecially enter, claiming the whole land, and taking the whole profits, that ſhe gains the one moiety, viz. of her ſiſter by abatement, and yet her dying ſeiſed ſhall not take away the entry of her ſiſter; whereas when one Coparcener enters generally and taketh the profits, this ſhall be accounted in Law the entry of them both, and no diveſting of the moiety of her ſiſter.

See more of this in the chapter of Warranty, Sect. 710. 28 Aſſ.30. Vide Sect. 710.

If one Coparcener enter claiming the whole, and make a feoffment in *Fee*, and take back an eſtate to her and her heirs, and hath iſſue, and die ſeiſed; this Deſcent ſhall take away the entry of the other ſiſter, becauſe by the Feoffment the priority of the Coparcenary was deſtroyed.

¶ *Claimont per un meſme title, &c.* Of this ſufficient hath been ſaid in the next precedent Section.

¶ *Ne poient enter, &c.* Of this there hath been alſo ſpoken in the ſame Section.

Sect. 399.

Pl. Com. 57. 39 E.3. Le darreine caſe.

¶ *Seiſie en fee.* For this holds not in caſe of an eſtate taile.

Lib. 8. fol. 101, 102. Sir Rich. Lechfords caſe.

¶ *Mulier, ſeu filius mulieratus.* *Mulier* hath three ſignifications; Firſt, Sub nomine mulieris continetur quælibet Fœmina. Secondly, Propriè ſub nomine mulieris, continetur Virgo. Thirdly, Appellatione mulieris in Legibus Angliæ, continetur Uxor. Et ſic filius natus vel filia nata ex juſta uxore, appellatur in Legibus Angliæ filius mulieratus, ſeu filia mulierata, a Donne mulier, or a Daughter mulier, Sicut Baſtardus dicitur à Græco verbo Baſſaris, i. e. Meretrix, ſeu Concubina, quia procreatur ex meretrice ſeu con-

Glanvil. lib. 7. cap. 2. Bract. lib. 5. cap. 19. Brit. cap. 70.

Vide Sect. 188.

¶ Item ſi home eſt ſeiſie de certaine Terre en fee, & ad iſſue deux fits, & leigne fits eſt Baſtard, & le puiſne freſt mulier, & le Pier debie, & le Baſtard enter enclaimant cõe heire a ſon pier, & occupia la terre tout ſa vie ſans aſcun entre fait ſur luy per l' mulier, & le Baſtard ad iſſue & morust ſeiſie de tiel eſtate en fee,

ALſo if a man be ſeiſed of certain lands in fee, and hath Iſſue two ſons, and the elder is a Baſtard, and the younger *Mulier*, & the father die, and the Baſtard entreth claiming as heir to his Father, and occupieth the Land all his life, without any entry made upon him by the *Mulier*, & the Baſtard hath Iſſue and dieth ſeiſed & ſo

& la Terre diſcendiſt a ſon Iſſue, & ſon Iſſue enter, &c. En ceſt caſe le mulier eſt ſans remedy, car il ne poit enter, ne aver aſcun Action pur recoverer la Terre, pur ceo que eſt un ancient Ley en tiel caſe, &c.

of ſuch eſtate in Fee, and the Land deſcend to his Iſſue, & his Iſſue entreth, &c. In this caſe the *Mulier* is without remedy, for he may not enter, nor have any Action to recover the land, becauſe there is an ancient law in this caſe uſed, &c.

concubina. In Engliſh, he is called baſe born, and thereupon ſome ſay, That a Baſtard is as much to ſay, as one that is a Baſe Natural, for Aërd ſignifieth Nature. I read in Fleta. (p) That there be three kinds of Baſtards, viz. Manſer, Nothus, & Spurius, which are deſcribed in two old Verſes;

(p) Fleta lib. 1. cap. 5. Vide Sect. 380.

Manſeribus ſcortum, Notho Mœchus dedit ortum.
Ut ſeges è ſpica, ſic Spurius eſt ab amica.

But we term them all by the name of Baſtards that be born out of a lawfull marriage. By the Common Law, (r) if the Husband be within the four Seas, that is, within the Jurisdiction of the King of England, if the Wife hath Iſſue, no proof is to be admitted to prove the Child a Baſtard, (for in that caſe, Filiatio non poteſt probari) unleſs the Husband hath an apparent impoſſibility of procreation; as if the Husband be but eight years old, or under the age of procreation, ſuch Iſſue is Baſtard, albeit he be born within marriage. (ſ) But if the Iſſue be born within a month or a day after marriage, between parties of full lawful age, the Child is legitimate.

(r) Brack. lib. 4. fol. 278, 279. 7 H. 4. 9. 43 E. 3. 19. 41 E. 3. 7. 44 E. 3. 10. 29 Aſſ. 54. 38 Aſſ. 14. 1 H. 6. 7. 19 H. 6. 17. 39 E. 3. 13.

(ſ) 18 E. 4. 28.

¶ *Diſcendiſt a ſon iſſue.* For if the Baſtard dieth ſeiſed without Iſſue; and the Lord by Eſcheat entreth, this dying ſeiſed ſhall not bar the Mulier, becauſe there is no Deſcent. If the Baſtard enter, and the Mulier dieth, his Wife pridiemene enſeint with a Son, the Baſtard hath Iſſue and dieth ſeiſed, the Son is born, his right is bound for ever. But if the Baſtard dieth ſeiſed, his Wife enſeint with a Son, the Mulier enter, the Son is born, the Iſſue of the Baſtard is barred, for Littleton putteth his caſe, that there muſt not onely be a dying ſeiſed, but alſo a Deſcent to his Iſſue.

¶ *Et ſon iſſue enter, &c.* And ſo it is to be underſtood, albeit the Mulier after the decaſe of the Baſtard, doth enter before the Heir of the Baſtard, for the Deſcent divideth and not the entry of the Heir.

¶ *Le mulier eſt ſans remedie.* Hereby it appeareth that this Deſcent differeth from other Deſcents, for this Deſcent barreth the right of the Mulier, whereas other Deſcents do take away the entry onely of him that right hath, and leaveth him to his Action; but there by the dying ſeiſed of the Baſtard, his Iſſue is become lawful Heir (a) It is holden, that if the Mulier be within age at the time of the dying ſeiſed that nevertheleſſe he ſhall be barred, becauſe the Iſſue of the Baſtard is in judgment of Law become lawful Heir, and the Law doth prefer Legitimation before the priviledge of Infancie.

Lib. 8 for, for. Sir Rich. Lechfords caſe.

(a) 5 E. 2. Deſcent Br. 49. 31 Aſſ. 18. 22. 33 E. 3. Verdict. 48. 36 Aſſ. 2. Pl. Com. Stowels caſe. 10 E. 3. 2. 13 E. 1. tit. Baſtardy 28.

And the reaſon of this caſe is, for that Juſtum non eſt aliquem poſt mortem facere baſtardum, qui toto tempore vitæ ſuæ pro legitimo habebatur. And ſo it ſeemeth to be, That if a man hath Iſſue a Son being Baſtard eigne, and a Daughter, and the Daughter is married, the Father dieth, the Son entreth and dieth ſeiſed, this ſhall bar the Feme Covert. And the Deſcent in this caſe of Services, Rents, Reverſions, expectant upon Eſtates Tail, or for life, whereupon Rents are reſerved, &c. ſhall bind the right of the Mulier, but a deſcent of theſe ſhall not vide them that right have to an Action.

14 E. 2. Baſtardy 36.

So if the Baſtard dieth ſeiſed, and his iſſue endoweth the Wife of the Baſtard, yet is not the entry of the Mulier lawful upon the Tenant in Dower, for his right was barred by the Deſcent.

Sir Rich. Lechfords caſe ubi ſupra.

If the Baſtard eigne entreth into the Land, and hath Iſſue, and entreth into Religion, this Deſcent ſhall bar the right of the Mulier.

20 E. 3. Baſtardy 29.

¶ *Ad iſſue deux fits.* If a man hath Iſſue, ſuch a Baſtard as is aforeſaid, and dieth, and the Baſtard entreth and dieth ſeiſed, and the Land deſcendeth to his iſſue, the Collateral Heir of the Father is bound, as well as where there be two Sons.

Hil. 18 E. 3. cor. Reg. Rot. 144. Ebor. 17 E. 3. 59. F. tit. Baſtard 32 Sir Rich. Lechfords caſe ubi ſupra.

And where our Author ſpeaketh of Sons, ſo it is, if a man hath Iſſue two Daughters, the eldeſt being a Baſtard, and they enter and occupy peaceably as Heires, now the Law in favour of Legitimation, ſhall not adjudge the whole poſſeſſion in the Mulier, (who then had the onely right) but in both, ſo as if the Baſtard hath Iſſue and dieth, her Iſſue ſhall inherit.

See afterwards in the Chapter of Warranty.

(b) And

(b) 2 E. tit. Baſtardy 17. 21 E. 3. 34. b. 30 Aſſ. p. 7. Sir Rich. Lechfords caſe, ubi ſupra.
(c) Brit. cap. 70. 20 E. 3. Vouch. 129. 11 E. 3. Age 3. 5 H. 7. 2. Sir Rich. Lechfords caſe, ubi ſupra.

(b) And in the ſame caſe, if both daughters enter and make partition, this partition ſhall bind the Mulier for ever.

(c) And an Aſſiſe of Mortdanceſtor lieth not between the Baſtard and the Mulier in reſpect of the proximity of bloud.

And the Baſtard being impleaded or vouched ſhall have his age.

¶ *Et le Baſtard enter come heire a ſon pier.* If a man had Iſſue Baſtard eigne and Mulier Puiſne, and the Baſtard in the life of the Father hath Iſſue and dieth, and then the Father dieth ſeiſed, and the Son of the Baſtard entreth, as heir to his Grand-father and dieth ſeiſed, this Deſcent ſhall bind the Mulier.

¶ *Pur ceo que eſt antient Ley in tiel caſe uſe, &c.* As hereafter in our Commentary upon the two next Sections ſhall appear, by our ancient Books, and the ancient Statutes of the Realm. And here is implied how neceſſary it is after the example of our Author, to look into the Antiquities, then which nothing is more venerable, profitable and pleaſant.

Sect. 400.

¶ MEs il ad eſtre lopinion dalcuns, que ceo ſerra intendue lou le pier ad un fits baſtard per un feme, & puis eſpouſa meſme la feme, & apres leſpouſels il ad iſſue per meſme la feme un fits, ou un file mulier, & puis le pier morust, &c. ſi tiel Baſtard enter, &c. & ad Iſſue & debie ſeiſie, &c. donque avera liſſue de tiel Baſtard le Terre cleerment a luy, come avant eſt dit, &c. & nemy aſcun auter baſtard la mere, que ne fuit unque eſpouſe a ſon pier, & ceo ſemble bone & reaſonable opinion. Car tiel Baſtard nec devant eſpouſels celebres perenter ſon pier & ſa mere, per la Ley de Saint Eſgliſe eſt Mulier, coment que per la Ley del Terre il eſt Baſtard, & iſſint il ad un colour dentrer come heire a ſon pier, pur ceo que il eſt per un Ley mulier, &c. ſ. y la Ley de Saint Eſgliſe. Mes auterment eſt de Baſtard que nad aſcun maner colour dentrer come heire, entant que il ne poit per nul Ley eſtre dit mulier, car tiel Baſtard eſt dit en la Ley, Quaſi nullius filius, &c.

BUT it hath been the opinion of ſome, That this ſhall be intended where the Father hath a Son Baſtard by a woman, and after marrieth the ſame woman, and after the eſpouſals he hath iſſue by the ſame woman a ſon or a daughter, and after the Father dieth, &c. if ſuch Baſtard entreth, &c. and hath iſſue and die ſeiſed, &c. then ſhall the iſſue of ſuch Baſtard have the land clearly to him, as it is ſaid before, &c. and not any other Baſtard of the Mother which was never married to his Father, and this ſeemeth to be a good and reaſonable opinion: for ſuch a Baſtard born before marriage celebrated between his Father and his Mother, by the Law of holy Church is *Mulier*, albeit by the Law of the Land he is a Baſtard, and ſo he hath a colour to enter as heir to his Father, for that he is by one Law *Mulier*, s. by law of Holy Church. But otherwiſe it is of a Baſtard which hath no manner of colour to enter as Heir, in ſo much as he can by no Law be ſaid to be *Mulier*, for ſuch a Baſtard is ſaid in the Law to be *Quaſi nullius filius, &c.*

Mes

MES *ad eſte lopinion daſcuns, &c.* And our Author here ſaith, that this opinion is good and reaſonable, for that ſuch a Baſtard by the Law of holy Church, (*) is a Mulier.

Matrimonium ſubſequens legitimos facit quoad ſacerdotium non quoad ſucceſſionem, propter conſuetudinem regni quod ſe habet in contrarium. Yet the Canon Law holdeth them Legitimate quoad ſucceſſionem. At a Parliament holden (q) Anno 20 H. 3. for that to certifie upon the Kings Writ, that the ſon born before marriage is a Baſtard, was Contra Communem formam Eccleſiæ, rogaverunt omnes Epiſcopi Magnates ut conſentirent, quod nati ante matrimonium eſſent legitimi, ſicut illi qui nati ſunt poſt matrimonium quantum ad ſucceſſionem hæreditariam, quin Eccleſia tales habet pro legitimi: Et omnes Comites & Barones una voce reſponderunt, Quod nolunt Leges Angliæ mutare, quæ hucuſque uſitatæ ſunt & approbatæ.

(*) Vid. Britton fol. 128. b. 166 203. and the Statute of Mert. 20 H. 3. cap. 9. confirmeth this opinion. Hill. 18 E. 3. coram Rege in Theſaur. Ebor. Bract. lib. 2. fol. 63.

(q) Statut. de Merton. 20 H. 3. cap. 9. Vid. Bract. l. 5. 416, 417. 10 Aſſ. Pl. 20.

¶ *Iſſint que il ad un colour dentre, &c.* Here it is to be obſerved, That the Law more reſpecteth him that hath a colourable title, though it be not perfect in Law, than him that hath no title at all, as hath been ſaid (r) before.

(r) Vid. Sect. 397. & cap. garr. Sect.

Sect. 401.

¶ MES en le caſe avantdit, lou le Baſtard enter apres la mort le pier, & l' mulier luy ouſta, & puis le Baſtard diſſeiſiſt la mulier, & ad iſſue, & debie ſeiſie, & liſſue enter, donque la mulier poit aver briefe Dentre ſur diſſ. enbers liſſue del Baſtard & recovera la terre, &c. Et iſſint poies veier le diverſitie lou tiel Baſtard continue poſſ. tout ſa vie ſans interruption, & lou la mulier enter et interrupt le poſſeſſion de tiel Baſtard, &c.

BUT in the caſe aforeſaid, where the Baſtard enter after the death of the Father, and the mulier ouſt him, and after the Baſtard diſſeiſe the mulier, and hath iſſue and dieth ſeiſed, and the iſſue enter, then the mulier may have a Writ of *Entry ſur diſſeiſin* againſt the iſſue of the Baſtard and ſhall recover the Land, &c. And ſo you may ſee a diverſity where ſuch Baſtard continues the poſſeſſion all his life without Interruption. and where the mulier entreth and interrupts the poſſeſſion of ſuch Baſtard, &c.

¶ *Et la mulier luy ouſta.* An ſtranger in the name of the Mulier without his Commandement cannot enter upon the Baſtard, for that the Baſtard may gain the eſtate and bar the Mulier. And therefore regularly none ſhall enter but the Mulier, or ſome other by his Commandement. And therefore Littleton ſaith, (and the Mulier put him out) no more then in the caſe (a) of the Lord Awdley: for there an eſtranger of his own head could not enter in the name of him that right had to enter within the five years to avoid the Fine. But in both theſe caſes, firſt, if the Mulier agree thereunto before the deſcent of the Baſtard; or ſecondly, if he that right hath before the five years be paſt do aſſent thereunto, the claim is good, and ſhall avoid the eſtate both of the Baſtard, and of the Conuſee, as it was holden in the Lord Awdleys Caſe, Quia omnis ratihabitio retrotrahitur, & mandato æquiparatur, and it ſtandeth well with the words of the Statute, ſo that they purſue their title, &c. by way of Action or entry, and ſo is the book in (b) 31 H. 8. to be intended.

(a) Mich. 38. and 39 Eliz. in the Kings Bench upon evidence by the whole Court. Vid. 31 H. 8. enth. Conge. Br. 123.

4 H. 7. cap.

Vid. Sect. 334.

(b) 31 H. 8. entr. conge. Br. 123.

But in the caſe of the Baſtard eigne, which is Littletons caſe, Gardein in Socage, or Gardein in Chivalry may enter, for they are no ſtrangers, as in another place is plainly ſhewed. If an Infant make a feoffment in fee, an eſtranger of his own head cannot enter (c) to the uſe of the Infant, for the eſtate is voidable. But where an Infant or a man of full age is diſſeiſed, an entry by a ſtranger of his own head is good and veſteth preſently the eſtate in the Infant, or other diſſeiſee. So it is if Tenant for life make a feoffment in fee, an ſtranger may enter for a forfeiture in the name of him in the Reverſion, and thereby the eſtate ſhall be veſted in him. Et ſic de ſimilibus.

(c) Paſch. 39 El. in Communi, Ban. per Curiam. 10 H. 7. 16. 7 E. 3. 69. 26 E. 3. 62. per Thorpe. 43 E. 3. relied 28. 11 Aſſ. 11.

¶ *Lou*

¶ *Lou tiel Baſtard continue tiel poſſeſſion ſans interruption.* If the Mulier entreth upon the Baſtard, and the Baſtard recovereth the Land in an Aſſiſe againſt the Mulier, now is the Interruption avoided; and if the Baſtard dieth ſeiſed, this ſhall bar the Mulier.

2 Aſſ. 9. If the Baſtard eigne after the deceaſe of the Father entreth, and the King ſeiſeth the land for ſome contempt ſuppoſed to be committed by the Baſtard, for which no Freehold or Inheritance is loſt but only the profits of the Land by way of ſeiſure, and the Baſtard die, and his Iſſue is upon his petition reſtored to the poſſeſſion, for that the ſeiſure was without cauſe, the Mulier is barred for ever; for the poſſeſſion of the King when he hath no cauſe of ſeiſure, ſhall be adjudged the poſſeſſion of him for whoſe cauſe he is ſeiſed. But if after the death of the Father the Mulier be found heir and within age, and the King ſeiſeth, in that caſe the poſſeſſion of the King is in right of the Mulier, and veſteth the actual poſſeſſion in the Mulier, and conſequently the Baſtard eigne is fore-cloſed of any right for ever.

And ſo it is, when the King ſeiſeth for a contempt, or other offence of the Father, or of any other Anceſtor, in that caſe, if the iſſue of the Baſtard eigne upon a Petition be reſtored, for that the ſeiſure was without cauſe, the Mulier is not barred, for the Baſtard could never enter, and conſequently could gain no eſtate in the Land, but the poſſeſſion of the King in that caſe ſhall be adjudged in the right of the Mulier. And it is to be obſerved that the Baſtard muſt enter in vacuam poſſeſſionem, and continue during his life without interruption made by the Mulier.

Pl. Com. Parſon de Honylanes Caſe 91. 35 H.6.24. 21 H.6.9. 1 E.4.3. 21 E.4.5. 5 E. 4. 60. ¶ *Interrupt le poſſeſſion del Baſtard, &c.* If the Baſtard invite the Mulier to ſee his houſe, and to ſee Pictures, &c. or to dine with him, or to hawk, hunt or ſport with him, or ſuch like upon the Land deſcended, and the Mulier cometh upon the Land accordingly, this is no interruption, becauſe he came in by the conſent of the Baſtard; and therefore the coming upon the Land can be no treſpaſs; but if the Mulier cometh upon the ground of his own head, and cutteth down a Tree, or diggeth the ſoyl, or take any profit, theſe ſhall be interruptions, for rather then the Baſtard ſhall puniſh him in an action of treſpaſs, the act ſhall amount in Law to an Entry, becauſe he hath a right of Entry. So it is, if the Mulier put any of his beaſts into the ground, or command a ſtranger to put in his beaſts, theſe do amount to an Entry; for albeit in theſe caſes the Mulier doth uſe any expreſs words of entry, yet theſe, and ſuch like Acts, do without any word amount in Law to an Entry, for acts without words may make an Entry, but words without an Act (viz. Entry into the lands, &c.) cannot make an Entry, all which interruptions are implyed in the ſaid, &c.) More ſhall be ſaid hereafter of Interruptions in the Chapter of Continual Claim.

Sect. 402.

Brook. tit. deſcent 40. ¶ *Si un enfant deins age ad cauſe dentrer.* If a man ſeiſed of lands in Fee die, his Wife, privement enſeint with a ſon, and a ſtranger abate and die ſeiſed, and after the Son is born, he ſhall be bound by the Deſcent, becauſe he at the time of the deſcent had no right to enter; and this is to be gathered upon theſe words of Littleton, ad cauſe dentrer, which at the time of the Deſcent he had not.

20 H.6.28.b. 2 E.4. 25, 26. 15 E.4. deſcent 30. ¶ *Eſt eins per Diſcent, &c.* Here is implied any other heir, collateral or lineal.

(d) Vid. Sect. 259, 403. An Infant is accounted in Law (as hath been often ſaid,) (d) until he paſſeth the

¶ Item, ſi un enfant deins age ad tiel cauſe de entry en aſcun terres ou tenements ſur un auter, que eſt ſeiſie en fee, ou en fee taile, de meſme les terres ou tenements, ſi tiel home que eſt tielment ſeiſie, morust de tiel eſtate ſeiſie, & les terres diſcendont a ſon iſſue durant le temps que lenfant eſt deins age, tiel diſcent ne tollera

Alſo if an Infant within age hath ſuch cauſe to enter into any Lands or Tenements upon another, which is ſeiſed in fee, or in Fee tail of the ſame Lands or Tenements, if ſuch man who is ſo ſeiſed, dieth of ſuch eſtate ſeiſed, and the Lands deſcend to the Iſſue, during the time that the Infant is within age, ſuch deſcent ſhall not take away the entry of the lentry

lentry lenfant mes que il poit enter ſur le iſſue que eſt eins per diſcent, &c. pur ceo que nul laches ſerra adjudge en un Enfant deins age en tiel caſe.

Infant, but that he may enter upon the iſſue which is in by deſcent for that no laches ſhall be adjudged in an Infant within age in ſuch a caſe.

age of 21. years, and certain priviledges he hath in reſpect of his infancy.

¶ *Nul Laches ſerra adjudge en le infant deins age in tiel caſe.*

And Littleton well added (en tiel caſe) that, is, in caſe of Deſcent; for in ſome other Caſes, laches ſhall prejudice 33 E. 3. quar. Imp. 96.

an Infant: as laches ſhall be adjudged in an Infant, if he preſent not to a Church within ſix moneths; for the Law reſpecteth more the priviledge of the Church, (that the cure be ſerved,) then the priviledge of Infancy. And ſo the publike Repoſe of the Realm; concernings mens Freehold and inheritances, ſhall be preferred before the priviledge of Infancy; in caſe of a fine, where the time begins in the time of the Anceſtor. So non-claim of a Villrine, of an Infant by a year and a day, who had fled into ancient Demeſne, ſhall take away the ſeiſure of the Infant. And if an Infant dying not an appeal of the death of his Anceſtor within a year and a day, he is barred of his appeal for ever; for the Law reſpects more liberty and Life, then the Priviledge of Infancy. And here is to be obſerved, that Littleton putteth his caſe, that an Infant ſhall enter upon a Deſcent, when a ſtranger dieth ſeiſed; but he put it not ſo before, in the caſe of the Baſtard eigne. B. Tenant in tail introffeth A. in fee, A. hath iſſue within age, and dieth, B. abateth and dieth ſeiſed, the iſſue of A. being ſtill within age, this Deſcent ſhall bind (e) the Infant, for the iſſue in tail is remitted: and the Law both more reſpect an ancient right in this caſe, then the priviledge of an Infant that had but a defeaſible eſtate. As it is ſaid (f) if the King die ſeiſed of Lands, and the land deſcend to his ſucceſſor, that this ſhall bind an Infant, for that the priviledge of an Infant in this caſe holds not againſt the King. Pl. Com. 372. (e) 11 E. 4. 1. 2. F. N. B. 35. m. (f) 35 H. 6. 60.

Sect. 403.

¶ Item, ſi le baron & ſa Feme come en droit la feme ont title & droit denter en tenements que un auter ad en Fee, ou en fee taile, & tiel Tenant mourſt ſeiſie, &c. en tiel caſe lentre le Baron eſt tolle ſur le heire que eſt eins per Deſcent. Mes ſi le Baron devie, donque la Feme bien poit enter ſur liſſue que eſt eins per deſcent, pur ceo que Laches le Baron ne turnera la Feme ne ſes heires en prejudice ne en damage

ALſo if Husband and Wife, as in right of the wife, have title and right to enter into lands which another hath in fee, or in fee tail, and ſuch Tenant dieth ſeiſed, &c. In ſuch caſe the entry of the Husband is taken away upon the heir which is in by Deſcent: but if the Husband die, then the wife may well enter upon the Iſſue which is in by Deſcent, for that no Laches of the Husband ſhall turn the Wife or her heirs to any prejudice, nor loſe

¶ *Si baron & Feme come en droit ſa feme ont title & droit denter, &c. & tiel Tenant mourſt ſeiſie, &c.*

Theſe words are general, but are particularly to be underſtood, viz. when the wrong was done to the Wife during the coverture; for if a Feme ſole be ſeiſed of lands in Fee, and is Diſſeiſed, and then taketh husband; In this caſe the husband and wife, as in the right of the wife, have right to enter; and yet the dying ſeiſed of the diſſeiſor in that caſe ſhall take away the entry of the Wife after the death of her husband; and the reaſon is as well for that ſhe her ſelf, when ſhe was ſole, might have entred and reſtored the poſſeſſion; as alſo it ſhall be accounted her fault that ſhe would take ſuch a husband which would not enter before the Deſcent. 9 H. 7. 24. a. 2 E. 4. 23. 7 E. 3. 47. b. 20 H. 6. 28. 15 E. 4. deſcent. 30. 42 E. 3. 12.

But

9 H. 7. 24.

But there if the woman were within age at the time of her taking of husband then the dying seised shall not after the decease of her husband take away her Entry, because no folly can be accounted in her, for that she was within age when she took husband; and after Coverture she cannot enter without her husband; all which is implied in the said (&c.)

en tiel cas, mes que la feme & les heires ils poient enter, tiel discent est eschue durant le coverture.

in such case, but that the wife & her heirs may wel enter where such Descent is eschued during the Coverture.

Sect. 402.

¶ *Laches le Baron ne turnera la feme, &c. al prejudice, &c.* Laches signifieth in the Common Law, retchlesnes, or negligence, Et negligentia semper habet infortunium comitem. Here is a diversity to be observed, that albeit regularly no laches shall be accounted in Infants, or Feme Coverts, as is aforesaid, for not entry or Claim to avoid Descents, yet laches shall be accounted in them, for not performance of a Condition annexed to the state of the land. For if a Feme be infeoffed either before or after marriage, reserving a Rent, and for default of payment a re-entry, in that case, the laches of the Baron shall disherit the wife for ever. And so it is (n) of an Infant his laches, for not performing of a Condition annexed to a state, either made to his Ancestor or to himself, shall barre him of the right of the land for ever.

20 H. 6. 28. b.
(n) 31 Ass. p. 17.
42 E. 3. 1. Pl. Com. 55.
10 H. 7. 13 H. 7. 35 H. 6. 41.
Pl. Com. 236. b.
Fleta lib. 2. cap. 50.

It a man make a feoffment in fee to another reserving a Rent, and if he pay not the Rent within a moneth, that he shall double the Rent, and the Feoffee dieth, his heir within age the Infant payeth not the Rent, he shall not by this laches forfeit any thing. But otherwise it is of a Feme Covert; and the reason and cause of this diversity is, for that the Infant is provided for, by the Statute, (o) Non current usuræ contra aliquem infra ætatem existent', &c. But the Statute doth not extend to a Feme Covert, neither doth that Statute extend to a condition of a re-entry, which an Infant ought to perform; for the forfeiture thereof cannot be called Usura.

(o) Declatute de Mert. cap. 5.

Sect. 404.

¶ Mes la Court tient, lou tiel title est done al feme sole, que puis prent Baron, que nentra pas, eins suffer un Discent, &c. la auter est, car serra dit la folly le feme de prender tiel baron que nentre en temps, &c.

BUT the Court holdeth, where such title is given to a feme sole, who after taketh husband which doth not enter but suffer a Descent, &c. there otherwise it is; for it shall be said the folly of the wife to take such a husband which entred not in time, &c.

¶ This is added, and therefore as formerly I have done, I meddle not withal, howbeit the opinion is holden for Law, as it appeareth in the Section next precedent.

Sect. 405.

9 H. 7. 24.

¶ HEre Littleton explaineth a man of no Sound memory, to be, Non compos mentis. Many times (as here it appeareth) the Latine word explaineth the true sense, and calleth him not Amens, demens, furiosus, lunaticus, fatuus, stultus, or the like; for Non compos mentis is most sure and legal.

Non compos mentis is

Pl. Com. fol. 368. b. per. Sanders. lib. 4. fol. 127. 182. Berveleyes case. Mir. cap. 1. Sect. 9. cap. 5. Sect. 1. Bracton fol. 165. & 420. Brit. fol. 167. b. 217. 66. Fleta lib. 6. c. 39. Fitz. N. B. 222. b. Stanf. Prer. 33, 34.

¶ ITem, si home que est non sane memorie, que est adire en Latin Qui non est compos mentis, ad cause dentrer aucuns tiels tenements, si tiel Discent, ut supra, soit ewe en sa vie, durant le temps que il suit de

ALso if a man which is of non-sane memory, that is to say in Latine, *Qui non est compos mentis*, hath cause to enter into any such tenements, if such descent, *ut supra*, be had in his life during the time that he was not of sound

non

non ſane memorie, & puis devia, ſon heire bien poit enter ſur luy que eſt eins p̄ diſcent. Et en ceſt caſe poyes beyer un cas, q̄ l' heire poyet enter, & uncore ſon anceſtor que avoit meſme le title ne puiſſoit enter. Car celuy que fuit hors de ſa memorie al temps de tiel diſcent, ſil voile enter apres tiel diſcent, ſi action ſur ceo ſoit ſue vers luy, il nad riens pur luy a pleader, ou de luy ayder, mes adire que il fuit de non ſane memorie al temps de tiel diſcent, &c, & a ceo ne ſerra il reſceive adire, pur ceo que nul home d̄ pleine age ſerra reſceive en alcun plee per la ley a diſabler le perſon demeſn̄, mes l' heire bien poit diſabler le perſon ſon anceſtor pur ſon advantage demeſne en tiel cas, pur ceo q̄ nul laches poit eſtre adjudge per la ley en celuy que ad nul diſcretion en tiel caſe.

memorie, and after dieth, his Heir may well enter upon him which is in by Deſcent. And in this caſe you may ſee a caſe where the Heir may enter, and yet his Anceſtor which had the ſame title could not enter. For he which was out of his memory at the time of ſuch deſcent, if he will enter after ſuch a deſcent, if an action upon this be ſued againſt him, he hath nothing to plead for himſelf or to help him; but to ſay, that he was not of ſane memory at the time of ſuch Deſcent, &c. And he ſhall not be received to ſay this, for that no man of full age ſhall be received in any plea by the Law to diſable his own perſon; but the Heir may well diſable the perſon of his Anceſtor for his own advantage in ſuch caſe; for that no Laches may be adjudged by the Law in him which hath no diſcretion in ſuch caſe.

of four ſorts. 1. Idiota which from his nativity by a perpetual infirmity, is Non compos mentis. 2. He that by ſickneſs, grief, or other accident wholly loſes his memory and underſtanding. 3. A Lunatick that hath ſometime his underſtanding, and ſometime not, Aliquando gaudet lucidis intervallis, and therefore he is called Non compos mentis, ſo long as he hath not underſtanding. Laſtly, he that by his own vicious act for a time deprives himſelf of his memory and underſtanding, as he that is drunken. But that kind of Non compos mentis ſhall give no privilege or benefit to him or to his Heirs. And a Deſcent ſhall not take away the entry of an Idiot, albeit the want of underſtanding was perpetual; for Littleton ſpeaketh generally of a man of non ſane memory. So likewiſe if a man that becomes Non compos mentis by accident as is aforeſaid be diſſeiſed and ſuffer a deſcent, albeit he recover his memory & underſtanding again, yet he ſhall never avoid the deſcent; and ſo it is à fortiori, of one that hath Lucida intervalla; As for a Drunkard, who is Voluntarius Dæmon, he hath (as hath been ſaid) no privilege thereby; but what hurt or ill ſoever he doth, his drunkenneſs doth aggravate it, Omne crimen ebrietas & incendit, & deregit.

Lib. 4. 124, 125. Beverley's caſe.

And if an Idiot make a feoffment in fee, he ſhall in pleading never avoid it, by ſaying that he was an Idiot at the time of his feoffment, and ſo had been from his nativity. But upon an office found for the King, the King ſhall avoid the feoffment, for the benefit of the Idiot, whoſe cuſtody the Law giveth to the King. 39 H. 6. 42. b. Abb. Aſſ. 89. b. F. N. B. 202. 5 E. 2. 70. Britton, cap. 28. fol. 66. 25 Aſſ. p. 4. 35 Aſſ. pl. 10.

So it is of a Non compos mentis by accident, and of him Qui gaudet lucidis intervallis, of an Eſtate made during his Lunacy; for albeit the parties themſelves cannot be received to diſable themſelves; yet twelve men upon the Office may find the truth of the matter. But if any of them alien by fine or recovery, this ſhall not only bind himſelf, but his Heirs alſo. As amongſt other things requiſite to be known; theſe caſes you ſhall finde at large in my Commentaries, whereunto for brevity I refer the Reader: Upon all which Books there have been four ſeveral opinions concerning the alienation, or other act of a 32 H. 3. tit. Scire fac. 160. Stanf. Pr. 34. F. N. B. 302. a. Beverley's caſe, lib. 4. 126, 127, 128.

man that is Non compos mentis, &c. For firſt, ſome are of opinion, That he may avoid his own act by entry or plea. Secondly, Others are of opinion, That he may avoid it by writ, and not by plea. Thirdly, Others, That he may avoid it either by plea or by Writ; and of this opinion is Fitzherbert in his Natura Brevium, ubi ſupra. And Littleton here is of opinion, That neither by Plea, nor by Writ, or otherwiſe, he himſelf ſhall avoid it, but his Heir, (in reſpect his Anceſtor was Non compos mentis) ſhall avoid it by Entry, Plea or Writ. And herewith the greateſt Authority of our Books agree; and ſo it was reſolved with Littleton in Beverleys caſe, (r) where it is ſaid, That it is a Maxime of the Common Law, That the party ſhall not diſable himſelf: But this holdeth only in Civil cauſes; for in Criminal cauſes, as Felony, &c. the act and wrong of a mad man ſhall not be imputed to him, for that in thoſe cauſes, Actus non facit reum, niſi mens ſit rea; and he is Amens (id eſt) ſine mente, without his mind or diſcretion; and Furioſus ſolo furore punitur, a mad man is only puniſhed by his madneſs. And ſo it is of an Infant until he be of the age of fourteen, which in Law is accounted the age of diſcretion.

Vide Br. tit. Dum fuit intra ætatem 5.

(r) Lib. 4. fol. 126., 127.

26 Aſſ. 27. 21 H. 7. 31. Stanford 16. b. 8 E. 2. Coron. 412. 414. 351. 22 E. 3. ibid. 224. Beverleys caſe, ubi ſupra. F. N. B. 202. D. 8 H. 7. 2. Vide 3 E. 3. tit. Entrie Cong. Statham. 12 E. 4. 8. 39 H. 6. 4. Abbr. Aſſ. 89. 39 H. 6. 43.

¶ *Et en ceſt caſe poyes veier un caſe, &c.* And though Littleton ſaith, (One caſe) yet other caſes may be found to the ſame end: For if there be Grandfather, Father and Son, and the Father diſſeiſe the Grandfather, and make a Feoffment in Fee, without warranty, the Grandfather dyeth, albeit the right deſcend to the Father, he cannot by this right deſcended enter againſt his own Feoffment; but if he die the Son ſhall enter and avoid the Eſtate of the Feoffee.

So if the Grandfather be Tenant in Tail, and the Father diſſeiſe him ut ſupra, mutatis mutandis.

If Lands be given to two, and to the Heirs of one of them, he that hath the fee ſimple ſhall not have an action of Waſt upon the Statute of Glouceſter againſt the Joyntenant for life; but his Heir ſhall maintain an action of waſt againſt him upon the Statute of Glouceſter; ſo the Heir ſhall maintain that action which the Anceſtor could not.

15 E. 4. tit. Deſcent 30.

Sect. 406.

¶ Et ſi tiel home d non ſane memorie fait Feoffment, &c. il meſm ne poit enter ne aver briefe appell' Dum non fuit compos mentis, &c. cauſa qua ſupra: Mes apres la mort ſon fits bien poit enter, ou aver le dit Briefe Dum non fuit compos mentis a ſon election. Meſme la Ley eſt lou enfant deins age fait Feoffement, & devie, ſon heire poit enter, ou aver un Briefe de Dum fuit infra ætatem, &c.

AND if ſuch a man of Non ſane memory make a Feoffment, &c. he himſelf cannot enter nor have a Writ called *Dum non fuit compos mentis, &c. cauſa qua ſupra*: but after his death his Heir may well enter or have the ſaid Writ of *Dum non fuit compos mentis*, at his choice. The ſame Law is where an Infant within age maketh a Feoffment and dieth, his Heir may enter, or have a Writ of *Dum fuit infra ætatem, &c.*

¶ *Fait feoffment, &c.* Or any other like conveyance in paiis; but Fines and other aſſurances of Record are not implyed in this (&c.)

¶ *Meſme la ley dun Enfant,* This is true, as to the bringing of a Dum fuit infra ætatem, &c. but without queſtion the Infant in that caſe might have entred, as it appeareth in the next Section.

¶ *Briefe* Dum non fuit compos mentis. This Writ (as it appeareth by our Author) lyeth for the Heir of him that was Non compos mentis, and not for himſelf; but a Dum fuit infra ætatem lyeth as well for the Anceſtor himſelf after his full age, as for his Heir.

Sect.

Sect. 407.

¶ ITem, ſi jeo ſue diſſeiſie per un enfant deins age, le quel aliena a un auter en fee, & lalienee devie' ſeiſie, & les Tents, diſcendont a ſon heire, eſteant lenfant deins age, mon entry eſt tolle.

ALſo if I be diſſeiſed by an Infant within age, who alieneth to another in fee, and the Alienee dieth ſeiſed, and the lands deſcend to his heir being an Infant within age, my entry is taken away, &c.

Sect. 408.

¶ MES ſi lenfant deins age enk ſur l' hē que eſt eins p diſcēt, come il bien poit ſur ceo q̄ meſme le diſcent fuit durant ſon nonage, donque jeo bien puiſſe enter ſur le diſſeiſor, pur ceo que p ſon entrie il ad defeat & anient le diſcent.

BUT if the Infant within age enter upon the Heir which is in by deſcent, as he well may, for that the ſame Deſcent was during his Nonage, then I may well enter upon the Diſſeiſor, becauſe by his entry he hath defeated and taken away the Deſcent.

¶ HEre it appeareth, that the entry of the Infant is Lawful, and giveth advantage to the Diſſeiſee to enter alſo, becauſe the Deſcent which was the impediment is avoided. And it is to be obſerved, That if the Deſcent be caſt, the Infant being within age, he may enter at any time, either within age, or after his full age.

And ſo it is if an Infant make a Feoffment, &c. he may enter either within age, or at any time after his full age; and ſo in both caſes may his Heir.

Vid. the next Sect. following.
43 E. 3. tit. Entr. Cong. Vet. N. B. 126. b. F. N. B. 192.
45 E. 3. 21.

Sect. 409.

¶ EN meſme le manner eſt lou jeo ſue diſſeiſie, et le diſſeiſor fait Feoffment en fee ſur condit, & le Feoffee mor de tiel eſtate ſeiſie, jeo ne purroy my enter ſur l' hē le feoffee: mes ſi le Condition ſoit enfreint, iſſint q̄ pur cel cauſe le Feoffor enter ſur l' heire, ore jeo hī puiſſe enter, pur ceo que quant le Feoffor ou ſes heires entront pur le condition enfreint le diſcent eſt ouſterm̄ defeat, &c.

IN the ſame manner it is where I am diſſeiſed, and the diſſeiſor make a ſeoffment in fee upon condition, and the Feoffee die of ſuch eſtate ſeiſed, I may not enter upon the heir of the Feoffee: but if the condition be broken, ſo as for this cauſe the Feoffor enter upon the Heir, now I may well enter; for that when the Feoffor or his Heirs enter for the Condition broken, the Deſcent is utterly defeated, &c.

¶ THE reaſon hereof is apparent; for Ceſſante Cauſa, ceſſat Cauſatum. Tenant in Capite maketh a feoffment in Fee to the uſe of the Feoffee and his Heirs, until the Feoffor pay an hundred pounds to him or his Heirs; the Feoffor dieth, his heire within age; now hath the King the wardſhip of the body, and is intituled to the gard of the Land. But if the Feoffor pay the hundred pounds according to the limitation, the Wardſhip is diveſted, both for the body and the Land, and ſo it is in caſe of a Condition; for as Littleton here ſaith, the Deſcent which is the cauſe of Wardſhip, is utterly defeated; And by theſe two laſt caſes which Littleton hath here put, it appeareth; That there is no difference, where the Deſcent is diſaffirmed by a right Paramount, as where the ſtate was never lawe-

Vid. the Sect. next precedent.
Dyer 13 El. fol. 298, 299.

lawful, (as in the caſe of an Infant,) and where the deſcent is affirmed for a time, the eſtate being lawful, and being after defeated by matter ex poſt facto, by a title of Re-entry.

Sect. 410.

Vid. Sect. 200.

¶ *Entre en Religion, &c.* Here is implyed Profeſſion. This deſcent ſhall not bar the entry of the Diſſeiſee, for that the deſcent cometh by the Death of the Father, becauſe he entred into Religion, wherein there is an excellent point worthy of obſervation: For albeit the entry unto Religion make not the Deſcent, but the profeſſion, whereof you have read before, Sect. 200. Yet here you may learn by Littleton, That the Law reſpects the original Act, and that is, his entry into Religion, which is his own Act, whereupon the profeſſion followed, whereby the Deſcent happned; for Cujuſque rei poteſtiſſima pars, principium eſt. And again, Origo rei inſpici debet, whereof you ſhall make great uſe in reading of our Books. * Here Littleton attributeth the cauſe of the deſcent to his entry into Religion, which was his own Act, whereas a Deſcent doth not take away an entry unleſs it cometh by death, which, as Littleton ſaith, is the Act of God; and no glorious pretext of an Act, (no though it be of Religion) ſhall work a wrong to a ſtranger that hath right to bar him of his Entry: But it is ſaid, That in the caſe of the Baſtard eigne, and mulier puiſne, ſuch a Deſcent ſhall bind the Mulier, as before hath been ſaid; and ſuch an Heir that cometh in by ſuch a Deſcent, ſhall have his age.

* Vid. Pl. Com. Dame Hales Caſe. 6 E. 3. 41, &c.

10 E. 3. 55.

¶ Item, ſi jeo ſoy Diſſeiſie, et le Diſſeiſor ad iſſue & enter en Religion, per force de quel les Tenements diſcendōt a ſon iſſue, en ceſt caſe jeo bien puiſſe enter ſz iſſue, & untore la fuit un Diſcent. Mes pur ceo que tiel diſcēt vient al iſſue per fait le pier, ſ. pur ceo que il enter en Religion, &c. & le Diſcent ne vient a luy per fait de Dieu, ſ. per mort, &c. mon entre eſt congeable. Car ſi jeo Arraigne un Aſſiſe ō Novel Diſſeiſin envers mon Diſſeiſor, coment que il puit enter en religion, ceo ne abata my mon bē mes mō bē (ē non obſtant) eſtoyera en ſa force, & mon recovery vers luy ſerē boñ. Et per meſme le reaſon le diſcent que aveigne a ſon Iſſue per ſon fait demeſn̄ ne tollera moy ō mō entre, &c.

ALſo if I be diſſeiſed, and the Diſſeiſor hath Iſſue and entreth into Religion, by force whereof the lands deſcend to his iſſue; in this caſe I may well enter upon the iſſue, and yet there was a deſcent: but for that ſuch deſcent cometh to the iſſue by the Act of the Father, ſ. for that he entred into Religion, &c. and the Deſcent came not unto him by the act of God, (*ſcilicet*), by death, &c. my entry is congeable: for if I arraign an Aſſiſe of *Novel diſſeiſin* againſt my Diſſeiſor, albeit he after enter into Religion; this ſhall not abate my Writ, but my Writ (notwithſtanding this) ſhall ſtand in his force, and my recovery againſt him ſhall be good. And by the ſame reaſon the deſcent which cometh to his iſſue by his own Act, ſhall not take from me my entry, &c.

3 H. 6. 41. 10 H. 6. 10. b. 18 E. 4. 19. 9 E. 4. 25, 52. 7 E. 4. 15. 18 E. 3. 24. 25 E. 3. 39. 46 E. 3. 25, 30 E. 1. Brief 813. Bracton lib. 4. fo. 189. & lib. 5. fo. 414. 22 R. 2. Briefe 936, 15. Aſſ. pl. 8.

¶ *Car ſi jeo arraigne un Aſſiſe: &c.* Nota, if a man be Tenant or Defendant in a real or perſonal Action, and hanging the ſuit, the Tenant or Defendant entreth into Religion, by this the Writ is not abated, becauſe it is by his own Act. And ſo it is of a Reſignation, but otherwiſe it is of a Depoſition or a deprivation, becauſe he is expelled by judgment, and yet his offence, &c. was the cauſe thereof, ſed in præſumptione Legis, judicium redditur in invitum.

¶ *Moy de mon entry, &c.* Here is implyed, Or any of my heirs.

Still,

Sect. 411.

¶ ITem ſi jeo leſſe a un home certain terres pur terme de 20. ans, & un auter moy diſſeiſiſt, & ouſta le termor & debie ſeiſie, & les tenements diſcendont a ſon heire, jeo ne purroy enter, & uncore le leſſee pur terme dans bien poit enter pur ceo que il pur ſon entry ne ouſta le heir que eſt eins pur diſcent ō le franktenement que eſt a luy diſcendus mes ſolement claime daver les tenements pur term dans, le quel neſt pas expulſement de le franktenement de le heire que eſt eins per diſcent. Mes auterment eſt ou mon tenant a terme ō die eſt diſſeiſie, Cauſa patet, &c.

ALſo if I let unto a man certain lands for the term of twenty years, and another diſſeiſeth me, and ouſt the termor, and die ſeiſed, and the Lands deſcend to his Heir, I may not enter; and yet the Leſſee for years may well enter, becauſe that by his entry he doth not ouſte the heir who is in by Deſcent of the Freehold which is deſcended unto him, but onely claimeth to have the Lands for term of years, which is no expulſion from the Freehold of the heir who is in by Deſcent. But otherwiſe it is where my Tenant for term of life is diſſeiſed, *Cauſa patet, &c.*

¶ *Pur terme de 20. ans.* It is clear that a Deſcent ſhall not take away the entry of a Leſſee for years, as our Author here ſaith, nor of a Tenant by Elegit, or Tenant by Statute Merchant, or ſuch like, as have but a Chattle and no Freehold; and the reaſon is, for that by their entry upon the heir by deſcent, they take no Freehold (which as often hath been obſerved is ſo much reſpected in Law) from him; but otherwiſe it is of an eſtate for life, or any higher eſtate. And as a Deſcent of a Freehold and inheritance, ſhall take away the Entry of him that right hath to a Freehold or inheritance; ſo a Deſcent of a Freehold and Inheritance cannot take away the entry of him that hath but a Chattle; for that no Deſcent or dying ſeiſed can be of the ſame.

A man ſeiſed of an Advowſon in Fee grants three avoidances one after another, and after the Church becometh void, and the Grantor preſents, and his Clerk is admitted and inſtituted, and after the Church becomes void again, the Grantee may preſent to the ſecond avoidance, for that he was not put out of the poſſeſſion thereof; for as the Leſſor having the Freehold and Inheritance cannot diſſeiſe his Leſſee for years, having but a Chattle, that any deſcent may be caſt, to take away his entry (as Littleton here ſaith:) ſo in the ſaid caſe, the Grantor hath Franktenement and Fee of the Advowſon rightfully, ſo as he cannot make any uſurpation, to gain any eſtate, or to put the Grantee ſo out of poſſeſſion, as that he ſhould not preſent, no more then the Leſſe for years in this caſe, to enter. Alſo in reſpect of the priority that is between them, the uſurpation of the Grantor ſhall not put the Grantee out of the poſſeſſion for the two latter avoidances. And this was reſolved (a) by all the Judges of the Court of Common Pleas, which I my ſelf heard and obſerved.

(a) Hil. 18 Eliz. in Communi Banco.

Sect. 412.

¶ ITem, ſi eſt dit que ſi home eſt ſeiſie de tenements en fee per occupation en temps de guerre, & ent mozuſt ſeiſie en

ALſo it is ſaid that if a man be ſeiſed of Lands in fee by occupation in time of Warre, and thereof dieth ſeiſed in the

¶ *Per occupation en temps de guerre.* Firſt, it is neceſſary to be known what ſhall be ſaid, Time of peace. Tempus pacis: and what ſhall be ſaid, Tempus belli, ſive guerræ; time of war. Tempus pacis, eſt quan-

Inter brevia de anno 1 E. 3. parte 1. & Paſch. 28 E. 3. inter adjudicata coram Rege lib. 2. fol. 37. in Theſaur. Paſch. 39 E. 3. inter adjudicata coram Rege in Theſaur. l. 2. fol. 93.

do Cancellaria & aliæ Curiæ Regie ſunt apertæ, quibus lex fiebat cuicunque prout fieri conſuevit. And ſo it was adjudged in the caſe of Roger Mortimer, and of Thomas Earl of Lancaſter. Utrum terra ſit guerrina necne, naturaliter debet judicari per recorda Regis, & eorum qui curias Regis per legem terræ cuſtodiunt, & gubernant, ſed non aliomodo.

temps de guerre, & les Tenements diſcendont a ſon heir, tiel diſcent ne ouſtera aſcun home de ſon entry, & de ceo home poit bier en un plee ſur un briefe de Aiel, An. 7. E. 2.

time of war, and the tenements deſcend to his heir, ſuch deſcent ſhall not ouſt any man of his entry; and of this a man may ſee in a Plea upon a Writ of Aiel, 7 E. 2.

14 E. 3. tit. ſcire facias 122. but more fully in the Record at large.

And therefore when the Courts of Juſtice be open, and the Judges and Miniſters of the ſame may by Law protect men from wrong and violence, and diſtribute Juſtice to all; it is ſaid to be time of peace. So, when by invaſion, Inſurrection, Rebellions, or ſuch like the peaceable courſe of Juſtice is diſturbed and ſtopped, ſo as the Courts of Juſtice be as it were ſhut up, Et ſilent leges inter arma, then it is ſaid to be time of war. And the tryal hereof is by the records, and Judges of the Courts of Juſtice; for by them it will appear, whether Juſtice had her equal courſe of proceeding at that time, or no; and this ſhall not be tryed by Jury.

If a man be diſſeiſed in time of peace, and the Deſcent is caſt in time of War, this ſhall not take away the entry of the Diſſeiſee.

Bracton lib. 4. fol. 240.

Item tempore pacis, quod dicitur ad differentiam eorum quæ fuerunt tempore belli, quod idem eſt, quod tempore guerrino, quod nihil differt, à tempore juris, & injuriæ; eſt enim tempus injuriæ, cum fuerunt oppreſſiones violentæ, quibus reſiſti non poteſt, & diſſeiſinæ injuſtæ.

So as here by it alſo appeareth, that time of peace is the time of law and right, and time of War is the time of violent oppreſſion, which cannot be reſiſted by the equal courſe of Law. And therefore in all real actions, the expleas, or taking of the profits, are ſaid Tempore pacis; for if they were taken Tempore belli, they are not accounted of in Law.

Ingham cap. de novel diſſeiſin.

¶ *Per Occupation.* Occupation is a word of Art, and ſignifieth a putting out of a mans Freehold in time of War; and it is all one with a diſſeiſin in time of peace, ſaving that it is not ſo dangerous, as it appeareth here by Littleton; and therefore the Law gave a Writ in that caſe of Occupavit, ſo called by reaſon of that word in that Writ, in ſtead of diſſeiſivit, in the Aſſiſe of Novel diſſeiſin, if the diſſeiſin had been done in time of peace; whereby it appeareth, how aptly both in this, and in all other places, Littleton thorow his whole Book ſpeaketh. But albeit Occupatio, whereof Littleton here ſpeaketh, is uſed onely in the ſaid Writ, and in none other, (that I can find or remember) yet hath it been uſed commonly in Conveyances and Leaſes, to limit or make certain precedent words; as, ad tunc in tenura & occupatione. But occupatio is applied to the poſſeſſion, be it lawful or unlawful; it hath alſo crept into ſome Acts of Parliament, as 4 H. 7. cap. 19. 39 Eliz. cap. 1. and others; and occupare, is ſometime taken to conquer.

Lib. 4. fol. 49. 50. Ognels caſe.

¶ *Et de ceo home poit vier en un pleaſur briefe de Aiel, Anno* 7 E. 2. Hereby it appeareth, that ancient terms of years, after the example of Littleton, are to be cited and vouched, for confirmation of the Law, albeit they were never Printed, and that of thoſe years, thoſe eſpecially of E. 1 H. 3. &c. are worthy of the reading and obſervation, a great number of which I have ſeen and obſerved; which in mine opinion do give a great light, not onely to the underſtanding and reaſon of the Common Law, (and which Fitzherbert either ſaw not, or were by him omitted) but alſo to the true expoſition of the ancient ſtatutes made in thoſe times; yet mine advice is, that they ſhould be read in their time: for after our Student is enabled and armed to ſet on our year Books, or reports of the Law, let him read firſt the latter reports, for two cauſes: Firſt, for that for the moſt part the latter Judgments and Reſolutions are the ſureſt; and therefore it is beſt to ſeaſon him with them in the beginning, both for the ſettling of his judgment, and for the retaining of them in memory. Secondly, for that the latter are more facile and eaſier to be underſtood then the more ancient; but after the reading of them, then to read theſe others before mentioned, and all the ancient Authors that have written of our Law; for I would wiſh our Student to be a compleat Lawyer. But now to return; As it is in caſe of deſcent, ſo it is in caſe of preſentation; for no uſurpation in time of War putteth the right Patron out of poſſeſſion, albeit the incumbent come in by inſtitution and induction: and time of War doth not onely give priviledge to them that be in war, but to all others within the Kingdom, and although the admiſſion and inſtitution be in time of peace, yet if the preſentment were in the time of War, it putteth not the right Patron out of poſſeſſion.

6 E. 3. 41. 7 E. 3. darr. preſ. 2. 18 E. 2. quar. imp. 175. F. N. B. 31.

Sect.

Sect. 413.

¶ Item, que nul moyant seisie (ou les tenements bien moyent un auter per succession) tollera lentr dalcun person, &c. Come de Prelates, Abbots, Priors, Deans, ou Person deglise, ou d auters corps politike, &c. coment q ils fueront xx. moyants seisie, & xx. successors, ceo ne tolle jammes alcun home de son entry.

Also that no dying seised (where the tenements come to another by succession) shall take away the entry of any person, &c. As of Prelates, Abbots, Priors, Deanes, or of the Parson of a Church, or of other bodies politike, &c. albeit there were xx. dyings seised, and xx. successors, this shall not put any man from his entry.

¶ Plus serra dit de descents en le prochein chapter.

More shall be said of Descents in the next chapter.

¶ *Per Succession.* This in the Common Law is applied onely to bodies politike or Corporate, which habe succession perpetual, and not to naturall men, as is a Bishop and his successors, or to an Abbot, Deane, Archdeacon, Prebend, Parson, &c. and their successors, and not to I. S. or any other natural body and his successors, but to him and his heirs. And the Successor of any of these is in the Post, and the heir of the natural man is in the Per; and Succedere, is derived of Sub & cedere. Vide Sect. 1. 7 E. 3. 25. a. 5 E. 3. 13. & 31.

¶ *Corps politike, &c.* This is a Body to take in succession, framed (as to that capacity) by policy, and thereupon it is called here by Littleton a body politike; and it is also called a Corporation, or a body incorporate, because the persons are made into a body, and are of capacity to take and grant, &c. And this politike, or incorporate body, may commence, and be established three manner of wayes, viz. by prescription, by letters patents, or by Act of Parliament. Every body politike or corporate, is either Ecclesiastical or Lay: Ecclesiastical either regular, as Abbots, Priors, &c. or Secular, as Bishops, Deans, Archdeacons, Parsons, Vicars, &c. Lay, as Mayor and Commonalty, Bayliffs and Burgesses, &c. Also every body Politike or Corporate, is either elective, presentative, collative, or donative. And again, it is either sole, or aggregate of many, as you may read in the third part of my Commentaries. And this body Politike or Corporate aggregate of many, is by the Civilians called Collegium or Universitas. Lib. 3. fol. 72. in the case of the Dean and Chapter of Norwich.

Chap. 7. *Continual Claim.* Sect. 414.

¶ Continual claime est la lou home ad droit & title dentrer en ascuns terres ou tenements dont auter est seisie en fee, ou en fee taile, si celluy q ad title dentrer fait cō-

Continual claim is where a man hath right & title to enter into any lands or Tenements whereof another is seised in fee, or in fee tail, if he which hath title to enter makes continual claim to the Lands or Tene-

¶ Here our Author first describeth what a continual claim is. It is called Continuum Clameum, because at the Common Law it must have been made within every year and day, as Littleton here teacheth. And yet if he that right hath, maketh claim, and the Tertenant dieth within the year, and the day, this claim though it be but once * made (as Mirror cap. 1. Sect. 14. & Sect. 18. Bract. lib. 5. fol. 435, 436. Britton 107. b. 126. b. Fleta lib. 6. cap. 52, 53. Vide Sect. 4. 24. Vide Sect. 383. 38 H. 8. f. 33.

(*) Vide Sect. 424.

(as hath bæn ſaid) ſhall preſerve the entry or him that maketh the claim.

¶ *Ad droit & title denter.* And yet in ſome caſes, a continual Claim may be made by him that hath right and cannot enter.

If tenant for years, Tenant by Statute Staple, Merchant, or Elegit, be ouſted, and he in the reverſion diſſeiſed, the Leſſor, or he in reverſion, may enter to the intent to make his claim, and yet his entry as to take any profits, is not lawful during the term. And in the ſame manner, the Leſſor or he in the reverſion in that caſe, may enter to avoid a collateral warranty, or the Leſſor in that caſe may recover in an Aſſiſe: And ſo (as ſome have holden) may the Leſſor doe in caſe of a leaſe for life, to this intent, to avoid a Deſcent, or a Warranty.

Dier 19 Eliz. Pl. Com. 374. 15 H. 7. 3. 4 Jacobines caſe, 28 H. 6. 28.

Vide Sect. 442. 43 E. 3. 21.

If the Diſſeiſee make continual claim, and the Diſſeiſor die ſeiſed within the year, his heir within age, and by office the King is intitled to the Wardſhip, albeit the entry of the diſſeiſee be not lawful, yet may he make continual claim to avoid a deſcent, and ſo in the like.

7 H. 6. 40. Contin. Claime 1. Downclers caſe 5 E. 4. 4.

¶ *Uncore poit celuy que fait tiel claime ou ſon heire enter.* This is to be underſtood in this manner, that if the Father make claime, and the Diſſeiſor dieth, and then the Father dieth, that his heir may enter, ſtands the deſcent was caſt in the Fathers time, and the right of entry which the Father gained by his claim, ſhall deſcend to his heir. But if the Father make continual claim, and dieth, and the Son make no continual claim, and within the year and day after the claim made by the Father, the Diſſeiſor dieth, this ſhall take away the entry of the Son, for that the deſcent was caſt in his time, and the claim made by the Father ſhall not availe him that might have claimed himſelf. And of this opinion was Littleton himſelf in our Books, where he holdeth, that no continual claim can avoid a Deſcent, unleſs it be made by him that hath title to enter, and in whoſe life the dying ſeiſed was. See more of this matter hereafter in this Chapter, Sect. 416.

Bracton lib. 5. fol. 436. Fleta lib. 5. cap. 52, 53. 22 H. 6. 37. 9 H. 4, 5. a. 15 E. 2. 22. a.

And as here Littleton putteth his caſe of the Anceſtor and heir, ſo it holdeth in all reſpects of the Predeceſſor and Succeſſor.

22 H. 6. 37.

tinual claime a les terres ou tenements devant le mourant ſeiſie de celuy que tient les tenements, donqz coment que tiel tenant mourſt ent ſeiſie, & les terres ou tenements diſcendront a ſon heire, uncore poit celuy que avoit fait tiel claime ou ſon heire, enter en les terres, ou tenements iſſint diſcendus, per cauſe de le continual claim fait, nient contreſtiant le diſcent. Sicome en caſe que home ſoit diſſeiſie, & le diſſeiſee fait continual claime a les tenements en la vie le diſſeiſor, coment qne le diſſeiſor devie ſeiſie en fee, & la terre diſcendiſt a ſon heire uncore poit le Diſſeiſee enter ſur la poſſeſſion le heire, nient obſtant le deſcent.

ments before the dying ſeiſed of him which holdeth the Tenements, then albeit that ſuch tenant dies thereof ſeiſed, and the lands or Tenements deſcend to his heir, yet may he who hath made ſuch continual claim, or his heir, enter into the lands or tenements ſo deſcended by reaſon of the continual claim made, notwithſtanding the Deſcent. As in caſe that a man be diſſeiſed, and the diſſeiſee makes continual claim to the Tenements in the life of the diſſeiſor, although that the diſſeiſor, dieth ſeiſed in Fee, and the Land deſcend to his heir, yet may the diſſeiſee enter upon the poſſeſſion of the heir, notwithſtanding the deſcent.

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¶ EN meſme l' maner eſt, ſi tenant a terme de vie alien en fee, celuy en le reverſion, ou celuy en le remainder poit enter ſur lalienee: et ſi tiel alienee devie ſeiſie de tiel eſtate ſans continual claim fait a les tenements devant le mozant ſeiſie del alienee, & les tenements per cauſe del mozant ſeiſie del alienee, diſcendont a ſon heire, donques ne poit celuy en le reverſion, ne celuy en le remainder enter. Mes ſi celuy en le reverſion, ou celuy en le remainder que ad cauſe dentre ſur lalienee fait continual claime a les tenements devant le mozants ſeiſie del alienee, donques tiel bone poit enter apres la mozt lalienee, auxibien come il puiſſoit en ſa vie.

IN the ſame manner it is, if Tenant for life alien in Fee, he in the reverſion or he in the remainder may enter upon the Alienee. And if ſuch Alienee dieth ſeiſed of ſuch eſtate without continual claim made to the Tenements before the dying ſeiſed of the Alienee, and the lands by reaſon of the dying ſeiſed of the Alienee deſcend to his heir, then cannot he in the reverſion nor he in the remainder enter. But if he in the reverſion or in the remainder, who hath cauſe to enter upon the Alienee, make continual claim to the land before the dying ſeiſed of the Alienee, then ſuch a man may enter after the death of the Alienee, as well as he might in his life time.

¶ By this it appeareth; that a continual claim may be made as well where the lands are in the hands of a Feoffee, &c. by title, as in the hands of the Diſſeiſor, Abator or Intrudor by wrong, as before hath been noted.

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¶ ITem, ſi terr̃ ſoit leſſe a un home pur terme de ſa vie, l' remainder a un auter a terme de vie, le remainder a le tierce en fee, ſi le Tenant a terme de vie aliena a un auter en fee, & celuy en le remainder pur terme de vie fait continual claime a la terre devant le morant ſeiſie dalienee,

ALſo if land be let to a man for term of his life, the remainder to another for term of life, the remainder to the third in fee, if tenant for life alien to another in fee, and he in the remainder for life maketh continual claim to the Land before the dying ſeiſed of the Alienee, and after the

¶ *A Lien a un auter en fee.* It is to be obſerved, that a forfeiture may be made by the alienation of a particular tenant two manner of ways; either in Pais, or by matter of Record.

In Pais, of lands and tenements which lie in Livery (whereof Littleton intendeth his caſe) where a greater eſtate paſſeth by Livery, then the particular Tenant may lawfully make, whereby the reverſion or remainder is deveſted, as here in the example that Littleton putteth, when tenant for life alieneth in

Vid. Sect. 581, 609, 610, 611.

in fee, which must be understood of a Feoffment, Fine, or Recovery by consent.

17 El. Dyer 339. 16 El. Dyer 324.

If tenant for life, and he in the remainder for life, in Littletons case, had joined in a feoffment in Fee, this had been a forfeiture of both their estates, because he in the remainder is particeps injuriæ. And so it is if he in the remainder for life had entred & disseised Tenant for life, and made a feoffment in Fee, this had been a forfeiture of the right of his remainder.

33 E. 3. Devise 21. 15 E. 4. 9. Vid. Sect. 608, 609, 610.

A particular estate of any thing that lies in grant, cannot be forfeited by any grant in fee by Deed. As if Tenant for life or years of an Advowson, Rent, Common, or of a reversion or remainder of Land, by Deed grant the same in Fee, this is no forfeiture of their estates, for that nothing passes thereby, but that which lawfully may pass, and of that opinion is Littleton in our books.

25 H. 7. 62. Tr. 32 El. in Informat. de intrusion vers Robinsons pur le Manor de Drayton Basset, so resolved by the Court of Exchequer.

But if Tenant for life or years of Land, the reversion or remainder being in the King, make a feoffment in fee, this is a forfeiture, and yet no reversion or remainder is divested out of the King; and the reason is, in respect of the solemnity of the feoffment by Livery, tending to the Kings disherison.

By matter of Record, and that by three manner of ways: First, By alienation. Secondly, By claiming a greater estate then he ought in a stranger.

& puis lalienée morust seisie, & puis apres celuy en le remainder pur term de vie morust, devaunt aucun entry fait pur luy, & cest cas, celuy en le remainder en Fee poit enter sur heire le Alienée, per cause de continual claime fait per luy que avoit le remainder pur terme de sa vie pur ceo que tiel droit que il averoit dentre, alera & remaindera a celuy en le remainder apres luy, entant que celuy en l' remainder en fee ne puissoit pas enter sur lalienée en Fee durant la vie celuy en l' remainder p terme d sa vie, & pur ceo que il ne puissoit adonqz faire cõtinual claim. (Car nul poit faire continual claim, mes quant il ad title dentrie, &c.

alienee dieth seised, & and after he in the remainder for life die before any entry made by him, in this case he in the remainder in Fee may enter upon the Heir of the Alienee, by reason of the continual claim made by him which had the remainder for life, because that such right as he had of entry shall go and remain to him in the remainder after him, insomuch as he in the remoinder in Fee could not enter upon the Alienee in Fee during the life of him in the remainder for life, and for that hee could not then make continual claim. (For none can make continuall claim but when he hath title to enter, &c.)

Thirdly, by affirming the Reversion or Remainder to be

First by alienation, and that of two sorts, viz. by alienation divesting, or not divesting the reversion or remainder; Divesting, as by levying of a fine, or suffering of a common recovery of Lands, whereby the reversion or remainder is divested: not divesting, as by levying of a fine in fee of an Advowson, Rent, Common, or any other thing that lieth in grant: and of this opinion is Littleton in our books, * and so note two diversities: First, between a grant by Fine (which is of Record) and a grant by Deed in pais; and yet in this they both agree, That the reversion or remainder in neither case is divested. Secondly, between a matter of Record, as a Fine, &c. and a Deed recorded, as a Deed inrolled; for that worketh forfeiture, because the Deed is the original.

* 15 E. 4. 9. 31 E. 3. Gr. 62. 14 E. 3. 3. Avow. 117.

Secondly, by Claim, and that may be in two sorts; either express or implyed. Express, as if Tenant for life will in Court of Record claim fee; or if Lessee for years be ousted, and he will bring an Assise, Ut de libero Tenemento. Implyed, as if in a Writ of right brought against him, he will take upon him to join the mise upon the meer right, which none but Tenant in fee simple ought to do. So if Lessee for years do lose in a Præcipe, and will bring a Writ of Error for Error in Proceels, this is a forfeiture.

15 E. 2. Judg. 237. 6 E. 3. 49. 9 E. 3. 4. 18 E. 2. Fines 120. 15 E. 4. 29. 36 H. 6. 29. 2 H. 6. 9. 4 El. Dy. 9 H. 5. 14. 22 Ass. 31. 18 E. 3. 28. 16 Ass. 16.

Thirdly,

Thirdly. By affirming the reverſion or remainder to be in a ſtranger, and that either actually or paſſively: Actually by five manner of ways. As firſt, if Tenant for life pray in aid of a ſtranger, whereby he affirms the reverſion to be in him. Secondly, if he attorn to a grant of a ſtranger; and there note alſo a diverſity betweene an Attornment of Record to a ſtranger, and an Attornment in pais; for an attornment in pais worketh no forfeiture. Thirdly, if a ſtranger bring a writ of Entry *in caſu proviſo*, and ſuppoſe the reverſion to be in him, if the Tenant for life confeſs the action, this is a forfeiture. Fourthly, if Tenant for life plead covinously, to the diſherſon of him in the reverſion, this is a forfeiture. Fifthly, if a ſtranger bring an action of Waſt againſt the Leſſee for life, and he plead Nul waſte fait, this is a forfeiture, or the like.

21 E.3.14.2. 5 E.4.2. 24 H.8. Fort.Br.87.lib.2. fol.55,56. Bucklers caſe. 27 E.3 77. 17 E.3.7.2. 39 E.3.16. 29 E.3.24. 5 Aſſ.5. 5 E.3.Entry Cong.42. 14 E.3.Receit 135. 3 E.3.32. 24 E.3.68. 1 H. 7.

Paſſively, As if Tenant for life accept a Fine of a ſtranger, Sur conuſans de droit come ceo, &c. for hereby he affirms of Record the reverſion to be in a ſtranger.

3 Mar. Dy. 148.

Littleton here ſpeaketh of the forfeiture of an Eſtate; and it is to be known, that the right of a particular Eſtate may be forfeited, and he that hath but a right of a remainder or reverſion, ſhall take benefit of the forfeiture. As if Tenant for life be diſſeiſed, and he levy a Fine to the Diſſeiſor, he in the reverſion or remainder ſhall preſently enter upon the Diſſeiſor, for the forfeiture. And ſo it is, if the Leſſee after the Diſſeiſin had levied a fine to a ſtranger, though to ſome reſpects, Partes finis nihil habuerunt, yet it is a forfeiture of his right.

Lib.2.fol.55. Bucklers Caſe.

13 E. 4. 4.

Littleton here ſpeaketh of an Alienation in fee abſolutely; but ſo it is, if the Leſſee for life make a leaſe for any other mans life, or a gift in tail. If A. be Tenant for life, and make a Leaſe to B. for his life, and B. dieth, and the Leſſee re-entreth, yet the forfeiture remaineth.

If a Tenant for life make a leaſe for life, or a gift in tail, or a feoffment in fee, upon condition, and entreth for the condition broken, yet the forfeiture remaineth. Littleton ſpeaketh of an Eſtate for life, ſo it is of Tenant in taile apres poſſibilitie, Tenant by the Courteſie, Tenant in Dower, or of him that hath an Eſtate to him and his heirs during the life of I. S. &c. and ſo of Tenant for yeares, Tenant by Statute Merchant, Statute ſtaple, or Elegit.

39 Aſſ. 15. 43 E.3. Entric Cong.30. 2 H.5.7. 39 E.3.16. 45 E.3.25.

Littleton ſaith, that where the alienation in fee is made to another, which muſt be intended a ſtranger, for if it be made to him in reverſion or remainder, it amounts to a ſurrender of his Eſtate, as at large hath been ſpoken in the Chapter of Tenant for life.

By Littleton it appeareth, That Tenant for life in remainder may enter for the forfeiture of the firſt Tenant for life, and that if the Tenant for life in remainder make Continual Claim, and the Alienee die ſeiſed, then may he in the remainder for life enter, and if he die before he do enter, then he in the remainder in Fee ſhall enter, becauſe he in the remainder in Fee could not make any Claim: and therefore the right of entry, which Tenant for life in remainder gained by his entry, ſhall go to him in the remainder in Fee, in reſpect of the priority of Eſtate: and ſo it is of him in the reverſion in fee in like caſe, for he is alſo prior in Eſtate.

If two Joyntenants be diſſeiſed, and the one of them make a continual claim and dieth, the ſurvivor ſhall take benefit of his continual claim, in reſpect of the priority of their Eſtate.

But if Tenant for life make Continual Claim, this ſhall not give any benefit to him in the remainder, unleſs the Diſſeiſor died in the life of Tenant for life, for the cauſe abovesaid; Sectione 41.4.

If Tenant in tail, the remainder in fee with garranty, habe judgment to recover in value, and dieth before execution without Iſſue, he in the remainder ſhall ſue execution; for he hath right thereunto, and is prior in Eſtate.

In the ſame manner, if Seigniory be granted by Fine to one for life, the remainder in fee, the Grantee for life dyeth, he in the remainder ſhall have a Per quæ ſervitia; for he hath right to the remainder, and is prior in Eſtate. Here alſo it appeareth, that none can make Continual Claim, but he that hath right to enter.

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¶ MES eſt a veier a toy (mon fits) coment & en ql maner tiel Continual Claime ſerra fait, & ceo bien appzender trois choſes ſont a intender. La. 1. choſe

BUT it is to be ſeen of thee (my ſon) how and in what manner ſuch Continual Claim ſhall be made; and to learn this well, three things are to be underſtood. The firſt

¶ *Si home ad cauſe dentrer en aſcuns terres ou tenements*, &c. It is not ſufficient to tell one generally what he ſhould do, but to direct him how, and in what manner he ſhall do it, as Littleton doth in this place. And here, the general rules of our Author are to be underſtoop

ſtood that the entry of a man to recontinue his Inheritance or Freehold, muſt enſue his Action for recovery of the ſame. As if three men diſſeiſe me ſeverally of three ſeveral Acres of land, being all in one County, and I enter in one Acre, in the name of all the three Acres, this is good for no more, but for that Acre which I entred into, becauſe each Diſſeiſor is a ſeveral Tenant of the Freehold; and as I muſt have ſeveral Actions againſt them for the recovery of the land, ſo mine entry muſt be ſeveral.

This hath been adiudged Mich. 14. & 15 Eliz. Rot. 1458. in the Earl of Arundels caſe.

And ſo it is, if one man diſſeiſe me of three Acres of ground, and letteth the ſame ſeverally to three perſons for their lives, &c. there the entry upon one Leſſee, in the name of the whole, is good for no more then that Acre that he hath in his poſſeſſion. But if the Diſſeiſor had leaſed ſeverally the ſaid three Acres to three perſons for years, there the entry upon one of the Leſſees, in the name of all the three Acres, ſhall re-continue and reveſt all the three Acres in the Diſſeiſee, for that the Diſſeiſee might have had one aſſiſe againſt the Diſſeiſor, becauſe he remained Tenant of the Freehold for all the three Acres, and therefore one entry ſhall ſerve for the whole.

7 Aſſ. 18. 12 E. 4. 16. 36 H. 6. 27. 32 Aſſ. pl. 1.

eſt, ſi home ad cauſe dentre en alcuns terres ou Tenements que ſont en divers Villes deins un mſme Countie, ſil enter en un parcel de les terres ou Tenements que ſont en un Ville, en noſmes de touts ſes terres ou Tenements as queux il ad droit dentre deins touts les Villes de meſme le Countie, per tiel entrie il avera auxy bone poſſeſſion, & ſeiſin de touts terres ou tenements dont il ad title dentrie, ſicome il avoit enter en fait en chescun parcel, & ceo ſemble grand reaſon.

thing is, if a man hath cauſe to enter into any lands or tenements in divers Towns in one ſame County, if he enter into one parcel of the lands or tenements which are in one Town, in the name of all the Lands or Tenements into the which he hath right to enter, within all the Townes of the ſame County: By ſuch entry he ſhall have as good a poſſeſſion and ſeiſin of all the Lands and tenements whereof he hath title of entry, as if he had entred indeed into every parcel; and this ſeemeth great reaſon.

If one diſſeiſe me of one Acre at one time, and after diſſeiſe me of another Acre in the ſame County at another time, in this caſe my entry into one of them in the name of both is good, for that one Aſſiſe might be brought againſt him for both Diſſeiſins.

11 H. 7. 25. Dyer 16. El. 337.

But if I infeoffe one of one acre of ground upon condition, and at another time I infeoffe the ſame man of another acre in the ſame County upon condition alſo, and both the Conditions are broken, an entry into one acre in the name of both is not ſufficient, for that I have no right to the land nor Action to recover the ſame, but a bare title, and therefore ſeveral entries muſt be made into the ſame, in reſpect of the ſeveral Conditions. But an entry in one part of the Land in the name of all the Land ſubject to one Condition, is good, although the parcels be ſeveral and in ſeveral Towns. And ſo note a diverſity between ſeveral rights of Entry, and ſeveral titles of Entry by force of a Condition.

¶ *Deins meſme la Countie.* For if the lands lie in ſeveral Counties, there muſt be ſeveral Actions, and conſequently ſeveral Entries, as hath been ſaid.

¶ *En noſme de tout, &c.* If one diſſeiſe me of two ſeveral acres in one County, and I enter into one of them generally, without ſaying, In the name of both, this ſhall reveſt only that Acre wherein entry is made, as hath been ſaid, and that is proved by our Books, which ſay, That if I bring an Aſſiſe of two acres, if I enter into one, hanging the Writ, albeit it ſhall reveſt that only Acre, yet the Writ ſhall abate.

¶ *Dont il ad title dentrie.* Here in a large ſenſe, title of Entry is taken for a right of Entry.

5 H. 7. 7. 4 E. 4. 19. 12 E. 4. 11. 2.

Sect. 418.

¶ CAR ſi home voile enfeoffer un auter ſans fait de certeine terres ou Tenements, que il ad deins pluſours villes en un Countie, & il voile liverer ſeiſin al feoffee de parcel de tenements deins un ville en noſme de touts les terres ou tenements quel il ad en meſme le ville, & en les auters villes, &c. touts les dits tenents, &c. paſſont per force de le dit livery de ſeiſin celuy a q̄ tiel feoffement en tiel maner eſt fait, & uncore celuy a que tiel livery de ſeiſin fuit fait, naveit droit en touts les terres ou tenements en touts les villes, mes per cauſe de livery de ſeiſin fait de parcel de les terres ou tenements en un ville: A multo fortiori il ſemble bone reaſon, que quant home ad title denter en les terres ou tenements en divers villes deins un c̄ County devant aſcun entry per luy fait, que per lentry fait p̄ luy en parcel de les terres en un ville en le noſme de touts les terres & tenements as queux il ad title denter deins meſme le County, ceo veſt un ſeiſin de touts en luy, & per tiel entry il ad poſſeſſion & ſeiſin en fait, ſicome il aveit enter en chescun parcel, &c.

FOR if a man will infeoffe another without deed of certain Lands or tenements which he hath in many Towns in one County, and he will deliver ſeiſin to the feoffee of parcel of the Tenements within one Town in the name of all the Lands or tenements which he hath in the ſame Town, and in other Towns, &c. all the ſaid tenements, &c. paſs by force of the ſaid livery of ſeiſin to him to whom ſuch feoffment in ſuch manner is made; and yet he to whom ſuch livery of ſeiſin was made hath no right in all the Lands or Tenements in all the Towns, but by reaſon of the livery of ſeiſin made of parcell of the Lands or tenements in one Town; *A multo fortiori*, it ſeemeth good reaſon that when a man hath title to enter into the Lands or Tenements in divers Towns in one ſame County, before entry by him made, that by the entry made by him into parcell of the Lands in one Town in the name of all the Lands and tenements to which he hath title to enter within the ſame County, this ſhall veſt a ſeiſin of all in him; and by ſuch entry he hath poſſeſſion and ſeiſin in Deed, as if he had entred into every parcel.

¶ This is evident; but here is a diverſity between a feoffment and an entry; for a man may make a feoffment of lands in another County, and make livery of ſeiſin within the view, albeit he might peaceably enter and make actual livery, and ſo may he there ſue Recognizors in an Aſſiſe, the view of lands in another County; but a man cannot make an entry into lands within the view where he may enter without any fear (for it is * one thing to diveſt, and another to divеſt) as hereafter ſhall be ſaid in the Section next following. 38 E. 3. 11. 38 Aſſ. 23. (*) Vide Sect. next following.

¶ *A multo fortiori.* Or A Minore ad majus, is an argument frequent in our Author, and in our Books; the force of argument in this place ſtandeth thus: if it be ſo in a feoffment paſſing a new right, much more it is for the reſtitution of an ancient right, as the worthier and more reſpected in Law, which holdeth affirmatively as our Author here teacheth us. Vide Sect. 438.

The this (&c.) in this Section need no explanation.

Sect. 419.

¶ LE ſecond thoſe eſt a entender, q̄ ſi home ad title denter en aſcuns terres ou tenements, ſil ne oſaſt enter en ẽs les terres ou tenements, ne en aſcun parcel de ẽ p̄ doubt de battery, ou per doubt de mayhem, ou per doubt de mort, ſil aſaſt et approach auxy pres la tenements, come il oſaſt pur tiel doubt, & claime pur parol les tenements eſtre les ſoens, maintenant pur tiel claime il ad un poſſeſſion, & ſeiſin ẽ les tenemẽts, auxy bien come ſil uſt enter en fait, coment que il navoit unque poſſeſſion ou ſeiſin ō meſmes les terres ou tenits devant le dit claime.

THE ſecond thing to be underſtood is, that if a man hath title to enter into any lands or tenements, if he dares not enter into the ſame Lands or Tenements, nor into any parcel thereof for doubt of beating, or for doubt of maiming, or for doubt of death, if he goeth and approach as near to the tenements as he dare for ſuch doubt, and by word claime the Land to be his, preſently by ſuch Claim he hath a poſſeſſion and ſeiſin in the lands, as well as if he had entred indeed, although he never had poſſeſſion or ſeiſin of the ſame lands or tenements before the ſaid Claim.

Vide Sect. preced.

¶ Here is to be obſerved, that every doubt or fear is not ſufficient, for it muſt concern the ſafety of the perſon of a man, and not his houſes or goods; for if he fear the burning of his houſes, or the taking away or ſpoiling of his goods, this is not ſufficient, becauſe he may recover the ſame, or damages to the value, without any corporal hurt.

7 E.4.21. 39 H.6.5.

Again, if the fear do concern the perſon, yet it muſt not be a vain fear, but ſuch as may befall a conſtant man; as if the adverſe party lie in wait in the way with weapons, or by words menace to beat, maim or kill him that would enter; and ſo in pleading muſt be ſhew ſome juſt cauſe of fear, for fear of it ſelf is internal and ſecret. But in a ſpecial Verdict, if the Jurors do find that the Diſſeiſe did not enter for fear of corporal hurt, this is ſufficient, and ſhall be intended that they had evidence to prove the ſame. Talis enim debet eſſe metus qui cadere poteſt in virum conſtantem, & qui in ſe continet mortis periculum, & corporis cruciatum. Et nemo tenetur ſe infortuniis & periculis exponere.

39 E. 3. 38.
11 R.2. tit. dures 2.
12 H. 4. 19, 20.

And it ſeemeth that fear of impriſonment is alſo ſufficient, for ſuch a fear ſufficeth to avoid a Bond or a Deed, for the Law hath a ſpecial regard to the ſafety and liberty of a man. And impriſonment is a corporal damage, a reſtraint of liberty, and a kind of captivity. But ſee in the ſecond part of the Inſtitutes, *W.* 2. cap. 49. a notable diverſity between a Claim or an entry into land, and the avoidance of an Act or Deed for fear of battery.

Bract. lib.2.fol.16.b. Britton, fol.19.66. Fleta lib.3. cap.7. & lib.2. cap. 54. 49 E.3.14. 14 H.4.13. 39 Aſſ. 11. 11 H.6.51. 38 H.6.27. 39 H.6.36.5. 20 H.6.28. 4 E.4.17. 12 E.4.7.28 H.6. 8. 41 E.3.9. 11 H.4.6. 8 Aſſ.25. Vide Sect.434. W.2. cap.49. 13 H.4. dures 20.

¶ *Per tiel claime il ad un poſſeſſion & ſeiſin: &c.* Here is to be obſerved, that there be two manner of Entries, viz. an Entry in Deed, and an Entry in Law. An entry in Deed is ſufficiently known; an entry in Law is when ſuch a claim is made as is here expreſſed, which entry in Law is as ſtrong and as forcible in Law as an entry in Deed, and that as well where the lands are in the hands of one by title as by wrong. And therefore upon ſuch an entry in Law an Aſſiſe doth lie, as well as upon an entry in Deed, and ſuch an entry in Law ſhall avoid a warranty, &c.

Vide Sect. 378. 11 H. 6. 51.

But here is a diverſity to be obſerved between an Entry in Law, and an Entry in Deed, for that a continual Claim of the Diſſeiſee being an entry in Law ſhall veſt the poſſeſſion and ſeiſin in him for his advantage, but not for his diſadvantage. And therefore if the Diſſeiſee bring an Aſſiſe, and hanging the Aſſiſe, he make continual claim, this ſhall not abate the Aſſiſe, but he ſhall recover damages from the beginning; but otherwiſe it is of an entry in Deed. See more of this matter after in this Chapter, Sect.422.

Vide Sect. 442. Pl. Com.93. in Aſſ. de freth force. The Parſon of Honylanes Caſe.

Sect.

Sect. 420.

¶ ET que la ley eſt tiel, il eſt bien prove per un plee dun aſſiſe en le Liver daſſ. An. 38 E. 3. P. 32. le tenor de quel enſuiſt en tiel forme. En le County de Dorſet devant les Juſtices trove fuit per verdict daſſiſe, que le Plaintife que avoit droit per diſcent de heritage daver les Tenements mis en plaint, al temps del morant ſon anceſtor, fuit demurront en le ville ou les tenements fueront, & per parolx claim les tenements enter ſes viſines, mes pur doubt de mort il noſa approcher les tenements, mes port laſſiſe, & ſur ceſt matter trove, agard fuit il recovera, &c.

AND that the Law is ſo, it is well proved by a plea of an Aſſiſe, in the Book of Aſſiſes, *An.* 38 *E.* 3. *P.*32. the tenor whereof followeth in this manner. In the County of *Dorſet*, before the Juſtices it was found by verdict of Aſſiſe, that the Plaintiff which had right by deſcent of Inheritance to have the Tenements put in plaint, at the deceaſe of the Anceſtor was abiding in the Town where the Tenements were, and by parol claimed the tenements amongſt his Neighbors, but for fear of death he durſt not approach the Tenements, but bringeth his Aſſiſe; and upon this matter found, it was awarded that he ſhould recover, &c.

¶ HEre it appeareth that our Book cases are the beſt proofs what the Law is, Argumentum ab authoritate eſt fortiſſimum in Lege. And for proof of the Law in this particular caſe, Littleton here citeth a caſe in 38 E. 3. but it is miſprinted, for the original according to the truth is, in the Book of Aſſiſes 38 E. 3. p. 23. and not placito 32. for there be not ſo many pleas in that year. And after the example of Littleton, Book-caſes are principally ſo to be cited for the deciding of caſes in queſtion, and not any private opinion. Teſte meipſo. More ſhall be ſaid of the matter implyed in this Section in the next following. 38 Aſſ. p. 23.

Sect. 421.

¶ LA tierce choſe eſt a entender, deins quel temps & per quel temps le claime que eſt dit continual claime, ſerbera & aidera celuy que fiſt le claime & ſes heires. Et quant a ceo eſt aſcavoir, que celuy que ad title denter, quant il voyer faire ſon claime, ſi il oſaſt approcher la

THE third thing is to know within what time & by what time the claime which is ſaid continual claim ſhall ſerve and aid him that maketh the claim, and his heirs. And as to this, it is to be underſtood, that he which hath title to enter, when he will make his Claim, if he dare approach the Land then

¶ *Covient a luy daler & approcher auxi pres, &c.* By this it ſhould ſeem, that by the authority of our Author, if the Diſſeiſe cometh as near to the Land as he dare, &c. and maketh his claim, this ſhould be ſufficient, albeit he be not within the view.

And the great authority of the Book * in 9 H. 4. (being by the whole Court) is not againſt this, for that caſe is put where there is no ſuch fear, as here our Author mentioneth in him that makes the continual Claim. (*) 9 H. 4. 5.

and then he that makes the continual claim ought to be within the view of the Land; and therefore the authority of this book, as it is commonly conceived is not against the opinion of our Author in the point aforesaid. But then it is further objected, that the said book is against another opinion of our Author in this Section, viz. that where there is no fear, &c. he that maketh a continual Claim, * ought to go to the Land or to parcel thereof to make his claim; and therefore in that case he cannot make a claim within the view of the Land

terre donqꝫ il covient aler a la terre ou a parcel de ceo, & faire son claime, & sil no-sast approcher la ꝛre pur doubt a pavoꝛ ď baterie, ou mayhē, ou moꝛt, donques covient a luy daler et approcher auxy prés come il osast vers la terre, ou parcel de ceo, a faire son claiñ.

he ought to go to the land, or to parcel of it, and make his claim, and if he dare not approach the Land for doubt or fear of beating or maiming, or death, then ought he to go and approach as near as he dares towards the land or parcel of it to make his Claim.

(*) 11 H.6.51. agrees with our Author in this point.

To this is answered, that where a continual Claim shall devest any estate in any other person in any Lands or Tenements, there, as it hath been said, he that maketh the Claim ought to enter into the Land or some part thereof, according to the opinion of our Author: but where the Claim is not to devest any estate, but to bring him that maketh it into actual possession, there a Claim within the view sufficeth, as upon a Descent, the heir having the freehold in Law may claim Land within the view to bring himself into actual possession; and in that sense is the opinion of Hull and the Court to be intended. Et sic in similibus. But yet the entry into some parcel in the name of the residue is the surest way.

Vide Sect. 177.

Sect. 422.

¶ *Deins lan, & le jour.* It is to be observed that the Law in many cases hath limited a year and a day to be a legal and convenient time for many purposes. As at the common Law upon a Fine or final judgment given in a writ of right, the party grieved had a year and a day to make his claim. So the wife or Heir hath a year and a day to bring an appeal of death. If a Villain remained in ancient Demesne a year and a day, he is privileged. If a man be wounded or poisoned, &c. and

¶ Et si son adversary q̄ occupia le terre moꝛust seisie en fē, ou en fē taile deins l'an et le jour apꝛes tiel claim, per que les tenemēts discendont a son fits come heire a luy, unꝛe poit celuy que fist le claime entrer sur le possession le heire, &c.

AND if his adversary who occupieth the land dyeth seised in fee, or in fee tail within the year and a day after such claim whereby the land descend to his son as heir to him, yet may he which makes the claim enter upon the possession of the heir, &c.

Vide Sect. 385, 426. 9 H.4.5. 14 H.4.36. 7 E.3.37. Pl. Com. 356, 357, 367. Mirror cap. 2. Sect. 18. Britton fol. 45. b. & 126.

dieth thereof within the year and the day, it is Felony. By the ancient Law if the Feoffee of a Disseisor had continued a year and a day, the entry of the Disseisee for his negligence had been taken away. After judgment given in a real action, the Plaintiff within the year and the day may have a Habere facias seisinam, and in an action of debt, &c. a Capias, Fieri facias, or a Levari facias. A protection shall be allowed but for a year and a day, and no longer, and in many other cases.

But this time of a year and a day in case of continual Claim, is since our Author wrote altered by the said Statute of 32 H.8. cap. 33. as before it appeareth.

Vide Sect. 389.

Sect.

Sect. 423.

¶ MEs en tiel tas apres lan & le jour que tiel claime fuit fait, ſi le pere donques morust ſeiſie ademaine procheine apres lan & le jour, ou un auter jour apres, &c. donques ne poit celuy que fiſt le claim entrer: & pur ceo ſi celuy que fiſt le claime doit eſtre ſure a touts temps que ſon entre ne ſerra toll per tiel diſcent, &c. il covient a luy deins lan & le jour apres le primer claime fait, de faire un auter claime en le forme avandit, & deins lan & le jour apres le ſecond claime fait, de faire le tierce claime en meſme le maner, & deins lan & le jour de le tierce claime de faire un auter claime, & iſſint ouſter, ceſtaſcavoir, de faire, un claime deins cheſcun an & jour procheine apres cheſcun claime fait durant le vie ſon adverſary, & donques, a quecunqz temps que ſon adverſary morust ſeiſie ſon entry ne ſerra tolle per nul tiel deſcent. Et tiel claime en tiel maner fait, eſt pluis communement priſe a noſme Continual Claime de luy que fiſt le claime.

BUt in this caſe after the year and the day that ſuch claim was made, if the Father then died ſeiſed the morrow next after the year and the day, or any other day after, &c. then cannot he which made the claim enter: And therefore if he which made the claim will be ſure at all times that his entry ſhall not be taken away by ſuch deſcent, &c. it behoveth him, that within the year and the day after the firſt claim made to make another claim in form aforeſaid, and within the year and the day after the ſecond claim made, to make the third claim in the ſame manner, and within the year and the day after the third claim to make another claim, and ſo over, that is to ſay, to make a claim within every year and day next after every claim made during the life of his adverſary; and then at what time ſoever his adverſary dieth ſeiſed, his entry ſhall not be taken away by any deſcent. And ſuch claim in ſuch manner made is moſt commonly taken and named Continual claim of him which maketh the claim, &c.

¶ IT is to be obſerved, that the year and the day ſhall be ſo accounted, as the day wherein the Claim was made ſhall be accounted one: as for example, If the Claim were made 2. Die Martii, that day ſhall be accounted for one, for Littleton ſaith in the Section next before (after the Claim made) and then the year muſt end the firſt day of March, and the day after is the ſecond day of March. Vide Sect. 385.

For the Computation of the year De anno biſextili, and of the day natural and artificial, and other parts of the year, (a) Bracton, (b) Britton, and (c) Fleta, excellent matter. (a) Bract. fol. 264, 344. 358. (b) Britton fol 209. (c) Fleta lib. 6. cap. 11. Statute de anno Biſex. 21 H. 3. Dier 17 Eliz. 345.

Sect. 424.

¶ MEs untore en le tas avandit, lou ſon adver- BUt yet in the caſe aforeſaid, where his Adverſary dieth

ſary mozuſt deins lan & la jour pzocheine apzes le claime, ceo eſt en Ley un Continual Claime entant, que ladverſary deins lan & le jour pzocheine apzes meſme la claime mozuſt. Car il ne beſoigne a celuy que fiſt ſon claime de faire aſcun auter claime, mes a quel temps que il voit deins meſme lan & jour, &c.

within the year and the day next after the claim, this is in law a continual claim, inſomuch as his adverſary within the year and the day next after the ſame claim, dieth. For he which made his Claim, needeth not to make any other claim but at what time he will within the ſame year and day, &c.

Vide Sect. 414.

This is evident.

Sect. 425.

¶ ITem, ſi ladverſary ſoit diſſeiſie deins lan & le jour apzes tiel claime, & le diſſeiſoz mozuſt ſeiſie deins lan & le jour, &c. tiel mozant ſeiſie ne griebera my celuy que fiſt le claime mes que il poit enter, &c. Car quecunque ſoit que mozuſt ſeiſie deins lan & le jour pzocheine apzes tiel claime fait ceo ne griebera my celuy que fiſt le claime, mes que il poit enter, &c. coment que fueront pluſoꝛs mozant ſeiſie, & pluſoꝛs Deſcents deins ñ lan & le jour, &c.

ALſo, if the adverſary be diſſeiſed within the year & the day after ſuch claim, and the Diſſeiſor thereof dieth ſeiſed within the year and the day, &c. ſuch dying ſeiſed ſhall not grieve him which made the claim, but that he may enter, &c. For whatſover he be that dyeth ſeiſed within the year and the day after ſuch claim made, this ſhall not hurt him that made the claim but that he may enter, &c. albeit there were many dyings ſeiſed, and many Deſcents within the ſame year and day, &c.

¶ HEre it appeareth, that the Continual Claim doth not onely extend to the firſt Diſſeiſoꝛ, in whoſe poſſeſſion it was made, but to any other Diſſeiſoꝛ, that dieth ſeiſed within the year and day after the Continual Claim made. And whereas our Author ſpeaketh of a ſecond Diſſeiſoꝛ, &c. herein is likewiſe implied not onely Abatoꝛs, and Intruders, but the Feoffees oꝛ Doners of the Diſſeiſoꝛs, Abatoꝛs oꝛ Intruders, and any other Feoffe oꝛ Done immediate oꝛ mediate, dying ſeiſed within the year and day of ſuch Continual Claim made.

Sect. 426.

¶ ITem, ſi home ſoit diſſeiſie, & le Diſſeiſoꝛ mozuſt ſeiſie deins lan & le jour pzocheine apzes le diſſeiſin fait, per que les Tenements diſcendont a ſon

ALſo if a man be diſſeiſed, and the diſſeiſor dieth ſeiſed, within the year and day next after the Diſſeiſin made, whereby the tenements deſcend to his Heir, in this

heire

heire, en teſt caſe lentrie le Diſſeiſée eſt toll, car lan & le jour que aidʒoit le Diſſeiſee en tiel caſe, ne ſerra pʒis de temps de title dentre a luy accrue, mes tantſolement de temps del claime per luy fait en le manner avantdit: & pur cel cauſe il ſerroit bone pur tiel diſſeiſée, pur faire ſon claime en auxy bʒeve temps que il puiſſoit apʒes le diſſeiſin, &c.

caſe the entry of the diſſeiſee is taken away; for the year and day which ſhould aid the Diſſeiſee in ſuch caſe, ſhall not be taken from the time of title of entry accrued unto him, but onely from the time of the claim made by him in manner aforeſaid: and for this cauſe it ſhall be good for ſuch diſſeiſee to make his claim in as ſhort time as he can after the Diſſeiſin, &c.

¶ This in caſe of a Diſſeiſor is now holpen by the Statute made ſince Littleton wʒote, as hath bẽn ſaid; for if the Diſſeiſor die ſeiſed within five years after the Diſſeiſin, though there be no Continual Claim made, it ſhall not take away the Entry of the Diſſeiſee; but after the five years, there muſt be ſuch Continual Claim as was at the Common Law: But that Statute extendeth not to any Feoffee or Donee of the Diſſeiſor immediate or mediate, but they remain ſtill at the Common Law, as hath bẽn ſaid. 32 H. 8. cap. 33. Vide Sect. 385. 422.

Sect. 427.

¶ ITem, ſi tiel Diſſeiſor occupia la terre per xl. ans, ou per pluſoʒs ans ſans aſcun claime fait per le diſſeiſée, &c. Et le Diſſeiſée per petit ſpace debaunt le moʒt del Diſſeiſor fait un claime en le foʒme avandit, ſi iſſint foʒtunaſt que deins lan & le jour apʒes tiel claime le Diſſeiſor moruſt, &c. lentry le Diſſeiſée eſt congeable, &c. & pur ceo il ſerroit bone pur tiel bome que ne fiſt claime que ad bone title dentrie, quant il oyet que ſon adverſary giſt languiſhment, de faire ſon claime, &c.

ALſo, if ſuch Diſſeiſor occupieth the lands forty years, or more years, without any claim made by the Diſſeiſee, &c. and the Diſſeiſee a little before the death of the Diſſeiſor makes a claim in the form aforeſaid, if ſo it fortuneth, that within the year and the day after ſuch claim, the Diſſeiſor die, &c. the entry of the Diſſeiſee is congeable, &c. And therefore it ſhall be good for ſuch a man which hath not made claim, and which hath good title of entry, when he heareth that his adverſary lieth languiſhing, to make his claim, &c.

¶ This is evident enough, and in reſpect of that which hath bẽn ſaid, needeth not to be explained.

Sect. 428.

¶ ITem, ſi come eſt dit en les caſes miſes, lou bome

ALſo, as it is ſaid in the caſes put, where a man hath title

¶ Here title is taken in his large ſenſe, to include a right.

¶ *Aſcun auter title,* &c.

&c. Here is implied Abators or Intruders, and not onely their Disseisors, but the Feoffees or Donees of disseisors, Abators, or Intruders, or any others so long as the entry is congeable.

ad title dentre pur cause dun Disseisin, &c. Mesme la Ley est lou home ad droit dentre per cause de alcun auter title, &c.

of entry by cause of a Disseisin, &c. the same Law is where a man hath right to enter by cause of another title, &c.

Sect. 429.

¶ ITem, de les dits Presidents poies scavar (mon fits) deux choses. Un est, lou home ad title dentre sur un Tenant en le taile, sil fist un tiel claim a la tre donques est lestate Taile defeat, car tel claime est come entre fait pur luy, & est de mesme leffect en Ley, si come il fuisoit sur mesmes Tenements, & ust entr̃ en mesmes le Tenements, come devant est dit. Et donques quant le Tenant le taile immediate puis tiel claime continua son occupation en les Tenements, ceo est un disseisin fait de mesmes le Tenements, a celuy que fist tiel claim, & sic per consequens, le Tenant adonques ad fee simple.

ALso, of the said foresaying thou maist know (my son) two things. One is, where a man hath title to enter upon a Tenant in tail, if he maketh such a claim to the land, then is the estate tail defeated; for this claim is as an entry made by him, and is of the same effect in law, as if he had been upon the same Tenements, and had entred into the same, as before is said. And then when the Tenant in tail immediately after such claim continue his occupation in the lands, this is a Disseisin made of the same Tenements to him which made such claim; and so by consequent, the Tenant then hath a Fee simple.

¶ *Presidents.* This should be Precedents, and so is the original; and this agreth with the right sense of Littleton.

And here it appeareth, That a Continual Claim, which is an Entry in Law, is as strong as an Entry in deed.

Vide Sect. 50, and 659, &c.

¶ *Title de entry.* Here Title de entrie is taken in the large sense, for right of Entry.

Sect. 430.

¶ LE second chose est, que auxy sovent que il que ad droit dentre fait tiel claim, & ceo nient contrestant son adversary continua son occupation, auxy sovent ladversary fait tort & disseisin a celuy que fist le claim. Et

THe second thing is, That as often as he which hath right of entry maketh such claim, & this notwithstanding his adversary continue his occupation, so often the Adversary doth wrong and Disseisin to him which made the claim,

pur

pur cel cauſe auxy ſovent poit celuy que fiſt un le claime pur chescun tiel tort & diſſeiſin fait a luy, aver un briefe de trſs. Quare clauſum fregit, &c. & recovera ſes damages, &c.

And for this cauſe ſo often may he which makes the ſame claim for every ſuch wrong & diſſeiſin done unto him, have a writ of treſpaſs. *Quare clauſum fregit, &c.* and recover his damages, &c.

¶ HEreby alſo it appeareth, that an entry in Law is equivalent to an entry in deed. ¶ *Avera breve de treſpaſſe,* Quare clauſum fregit, *& recovera ſes damages.* The Diſſeiſee ſhall have an action of treſpaſs againſt the Diſſeiſor, and recover his damages for the firſt entry without any regreſs, but after regreſs he may have an action of treſpaſs with a Continuando, and recover as well for all the mean occupation as for the firſt entry. And here note, that Littleton doth here include coſts within damages.

Sect. 431.

¶ OU il poit aver un briefe ſur l'ſtatute le Roy R. l'ſecond, fait lan de ſon raigne 5. ſuppoſant p ſon briefe, que ſon adverſary avoit ent & les terres ou tenements celuy que fiſt le claime, ou ſon entry ne fuit pas done per la ley, &c. & per tiel action il recovera ſes damages, &c. Et ſi le caſe fuit tiel, que ladverſary occupiaſt les tenements ove force & armes ou ove multitude de gents a temps de tiel claime, &c. immediate apres meſme le claime, poit celuy que fiſt le claime, pur chescun tiel fait aver un briefe de forcible entry, & recovera ſes treble damages, &c.

OR he may have a Writ upon the Statute of *R.* 2. made in the fifth year of his Reign, ſuppoſing by his Writ that his Adverſary had entred into the Lands or Tenements of him that made the Claim, where his entry was not given by the Law, &c. and by this action he ſhall recover his damages, &c. and if the caſe were ſuch that the adverſary occupied the Tenements with force and armes, or with a multitude of people at the time of ſuch Claim, &c. immedately after the ſame Claim may he which made the Claim for every ſuch act have a Writ of forcible entry, and ſhall recover his treble damages, &c.

¶ THis is the Statute of 5 R. 2. cap. 7. 37 H.6.35. 34 H.6.30. 13 H.7.15. 10 H.6.14. 2 E.4.18. 21 E.4.5.74. 13 E.2.3. 27 Aſſ.64. 38 Aſſ.9. 44 E.3.20. 10 H.7.27. Keylway 1.b. 5 R.2. cap. 7.

¶ *Per tiel action il recovera ſes damages.*

This is to be underſtood, that he ſhall recober damages for the firſt tortious entry, but not for the mean profits in this action, though he made a regreſs: And here note, that alſo he ſhall recober his coſts of ſuit expenſæ litis, which Littleton doth include within theſe words (damages.) &c. 2 E.4.24.b. 9 E.4.4.b. 16 H.7.6.2.

¶ *Damages.* Damna in the Common Law hath a ſpecial ſignification for the recompence that is given by the Jury for the Plaintiff or Defendant, for the wrong the Defendant hath done unto him.

¶ *Multitude.* One or more may commit a force; three or more may commit an unlawful aſſembly, a riot or rout. A multitude here ſpoken of (as ſome have ſaid) muſt be ten or more. Multitudinem decem faciunt. And ſo (ſay they) it is ſaid, de grege nominum. But I could never read it reſtrained by the common Law to any certain number, but left to the diſcretion of the Judges.

¶ *Un briefe de forcible entrie & recovera ſes treble damages.* This writ is

8 H 6. cap.9. 3 E.4.19.24. F.N.B.248. 11 E.4.11.b. 6 H.7.12.b. 22 H.6.37. 19 H.6. Regiſter 97. 22 H.6.57..F.N.B. 249. a.

is grounded upon the Statute of 8 H.6. and lieth either where one entreth with force, or where he entreth peaceably and detaineth it with force, or where he entreth by force, and detaineth it by force. And in this action without any regreſs the Plaintiff ſhall recover treble damages, as well for the mean occupation as for the firſt entry by force of the Statute. And albeit he ſhall recover treble damages, yet ſhall he recover coſts, which ſhall be trebled alſo. One may commit a forcible entry, as hath been ſaid, in reſpect of the armour or weapons which he hath, that are not uſually born, or if he do uſe violence and threats to the terror of another. And if three or four go to make a forcible entry, albeit one alone uſe the violence, all are guilty of force. If the Maſter cometh with a greater number of ſervants then uſually attend on him, it is a forcible entry.

10 H.7. 22.

33 H. 6. 20.

It is to be underſtood that there is a force implyed in Law, as every Treſpaſs and Recous and Diſſeiſin implyeth a force, and is vi & armis; and there is an actual force, as with weapons, number of perſons, &c. and when an entry is made with ſuch actual force, an action doth lie upon the ſaid Statute. See before more of force and arms, Sect.240.

Sect. 432.

¶ Item, il eſt a veier, ſi le ſervant dun home que ad title denter, poit per l' commandement ſon Maſter faire continual claim pur ſon Maſter, ou non.

Alſo it is to be ſeen, if the ſervant of a man who hath title to enter, may by the commandement of his Maſter make a continual Claim for his Maſter, or not.

This needeth no explication.

Sect. 433.

¶ Et il ſemble que en alcuns caſes il poit ceo faire, car ſil per ſon commandement vient a alcun parcel de la terre & la fait claime, &c. en le noſme ſon Maſter, ceſt claime eſt aſſets bone pur ſon Maſter, pur ceo que il fait tout ceo pur ſon Maſter covient faire ou devoit faire en tiel cas, &c. Auxy ſi le Maſter dit a ſon ſervant, que il ne oſaſt vener a la terre, ne alcun parcel de la terre, pur fair ſon claime, &c. & que il ne oſaſt approcher pluis prochein a la terre forſque a tiel lieu appel Dale, & commanda ſon ſervant dale a meſme le lieu de Dale, & la faire un claime pur luy, &c. ſi le ſervant iſſint fait, &c. ceo ſemble auxy bone claime pur ſon Maſter, ſicome

And it ſeemeth that in ſome caſes he may do this; for if he by his Commandement cometh to any parcel of the Land, and there maketh Claim, &c. in the name of his Maſter, this Claim is good enough for his Maſter, for that he doth all that which his Maſter ſhould or ought to do in ſuch caſe, &c. Alſo if the Maſter, ſay to his ſervant that he dares not come to the land, nor to any parcel of it to make his Claim, &c. and that he dare approach no nearer to the land then to ſuch a place called *Dale*, and command his ſervant to go to the ſame place of *Dale*, and there make a Claim for him, &c. if the ſervant doth this, &c. this alſo ſeemeth a good Claim for his Maſter, as if his Maſter were

ſon

ſon Maſter, la fuit en propre perſon, pur ceo que le ſervant fiſt tout ceo que ſon Maſter oſaſt & devoit faire per la ley en tiel caſe, &c.

there in his proper perſon, for that the ſervant did all that which his Maſter durſt, and ought to do by the law in ſuch a caſe, &c.

¶ HEre it appeareth, that where the ſervant doth all that which he is commanded, and which his Maſter ought to do, there it is as ſufficient as if his Maſter did it himſelf; for the rule is, Qui per alium facit, per ſeipſum facere videtur.

¶ *Per Commandement.* If an Infant or any man of full age have any right of Entry into lands; any ſtranger in the name and to the uſe of the Infant or man of full age may enter into the lands; and this regularly ſhall veſt the lands in them without any commandment precedent or agreement ſubſequent. (*) But if a Diſſeiſor levy a Fine with Proclamation according to the Statute, an eſtranger without a commandment precedent, or an agreement ſubſequent, within the five years, cannot enter in the name of the Diſſeiſee to avoid the Fine. And that reſolution was grounded upon the conſtruction of the Statute of 4 H 7. cap. 24. But an aſſent ſubſequent within the five years ſhould be ſufficient; Omnis enim rati-habitio retrotrahitur, & mandato æquiparatur, as hath been ſaid.

7 E.3.69. a. b.
45 E.3. Releaſe 28.
45 E. 3. it. Brieſe 589.
26 E.3.62. per Thorp.
11 Aſſ.p.11. 39 Aſſ.p.18.
20 H.7.12. a.
31 H.8.tit. entr. Cong. & tit. Fauxifier Recovery 29.
(*) Lib.9. fol.106. a. the Lord Awdley's Caſe.

¶ *Auxi ſi le maſter dit a ſon ſervant que il ne oſaſt, &c.* Here it appeareth that where the ſervant purſueth the commandment of his Maſter, and doth all that which his Maſter durſt and ought to do by the Law, this is ſufficient. And although the Maſter feareth more than the ſervant, or admit that the ſervant hath no fear at all, yet if he goeth as far as his Maſter durſt, and as he commanded, it is ſufficient. And this is implyed in this Section.

Sect. 434.

¶ AUry ſi home ſoit ey languiſhant, ou ey decrepyte, que il ne poit per nul maner bener a le terre, ne a alcun parcel d̄ ycel, ou ſi un reclule ſoit, q̄ ne poit per cauſe de ſon ordre aler hors de ſa meaſon. Si tiel maner de perſon commaunda ſon ſervant daler & faire claime pur luy, & tiel ſervant ne oſaſt aler a le t̄re, ne a alcun parcel de ceo pur doubt de batery, mayhem, ou mort, &c. et pur tiel cauſe tiel ſerv̄at dit̄ aury pres a la terre come il oſaſt pur tiel

ALſo if a man be ſo languiſhing, or ſo decrepite, that he cannot by any means come to the land nor to any parcel of it, or if there be a recluſe which may not by reaſon of his order goe out of his houſe, if ſuch manner of perſon command his ſervant to go and make claim for him, and ſuch ſervant dare not go to the land, nor to any parcel of it for doubt of beating, maim, or death, &c. and for this cauſe the ſervant cometh as near to the land as he dareth for ſuch doubt

¶ REgularly it is true, that where a man doth leſs than the Commandement or Authority committed unto him, there (the Commandment or Authority being not purſued) the Act is void. And where a man doth that which he is authorized to do and more, there it is good for that which is warranted, and void for the reſt; yet both theſe rules have divers exceptions and limitations.

For the firſt, Littleton here putteth a caſe where the ſervant doth leſs then he is commanded; and yet it ſufficeth, for that Impotentia excuſat legem; for ſeeing the maſter cannot, and the ſervant dare not enter into the land, it ſufficeth that he come as near to the land as he dare.

If a man make a Letter of Attorney to deliver ſeiſin to I. S. upon condition, and the Attorney delivereth it abſolute, this is void: and ſo ſome hold, if the warrant be abſolute, and he delivereth

11 H. 4. 3.
12 Aſſ. 24. 26 Aſſ. 39.

ſeiſin

See before, Sect. 416.

ſeiſin upon Condition the livery is void.

¶ *Pur battery, mayhem ou mort.* See the ſecond part of the Inſtitutes W. 2. cap. 49. a diverſity between the making of an Entry or Claim, and the avoidance of an Act or Deed.

¶ *Auterment le maſter ſerroit en treſgrand miſchiefe.* Argumentum ab inconvenienti eſt validum in lege, quia lex non permittit aliquod inconveniens. And as hath been often obſerved before. Nihil quod eſt inconveniens, eſt licitum.

46 E. 3. Petition 18.
33 H. 6. 8.
43 E. 3. 8. b. 30. a.

¶ *Recluſe.* Recluſus, Heremita ſeu Anachorita, ſo called by the order of his religion, he is ſo mured or ſhut up. Quod ſolus ſemper ſit, & in clauſura ſua ſedet, and can never come out of his place. Seorſim enim & extra converſationem civilem hoc profeſſionis genus ſemper habitat: Note here, albeit the Recluſe or Anachorite be ſhut up himſelf, ſo as he by his order is not to come out in perſon, yet to avoid a deſcent, he muſt command one to make claim; and ſuch a Recluſe ſhall always appear by Attorney in ſuch caſes where others muſt appear in proper perſon. Impotentia enim excuſat legem.

doubt, & fait l' claim, &c. pur ſon Maſter il ſemble que tiel claim pur ſon Maſter eſt aſſets fort, & bone en ley. Car auterment ſon Maſter ſerroit en treſgrand miſchiefe, car il bien poit eſtre que tiel perſon q̄ eſt languiſhment, decrepite, ou recluſe, ne poit trober aſcun ſervant que oſaſt aler a la terre, ne aſcun parcel de cel pur faire le claime pur luy, &c.

and maketh the claim, &c. for his Maſter, it ſeemeth that ſuch claim for his Maſter is ſtrong enough, and good in Law. For otherwiſe his Maſter ſhould be in a very great miſchief; for it may well be that ſuch perſon which is ſick, decrepit, or recluſe, cannot finde any ſervant which dare go to the land or to any parcel of it to make the claim for him, &c.

Sect. 435.

¶ Mes ſi le Maſter ō tiel ſervant ſoit de bone ſane, & poit & oſaſt bien aler a les Tenements, ou a parcel de ceo de faire ſon claime, &c. ſi tiel Maſter commanda ſon ſervant daler a aſcun parcel de la terre a faire claime pur luy, & quant le ſervant eſt an alant de faire le commandement de ſon Maſter, il oye per le voy tiels choſes que il ne oſaſt bener a aſcun parcel de la terre pur fair le claime pur ſon Maſter, & pur cel cauſe il vient auxy prés la tre come il oſaſt pur doubt de mort, & la fait claime pur ſon Maſter, & en le noſme de ſon Maſter, &c. il ſemble que le doubt en le ley en tiel caſe ſerroit, ſi claime avaſlera ſon Maſter, ou nemy,

BUT if the Maſter of ſuch ſervant be in good health, and can and dare well go to the Lands or to parcell of it to make his Claim, &c. if ſuch Maſter command his ſervant to go to any parcell of the Land to make claim for him, and when the ſervant is in going to do the commandement of his Maſter, he heareth by the way ſuch things as he dares not come to any parcel of the land to make the claim for his Maſter, and therefore he cometh as neer to the Land as he dare for doubt of death, and there maketh a claim for his Maſter, and in the name of his Maſter, &c. it ſeemeth that the doubt in Law in ſuch caſe ſhall be, whether ſuch claim ſhall avail his Maſter

pur

pur ceo que le ſervant ne fiſt tout ceo que ſon Maſter al temps de ſon commandement oſaſt faire, &c. Quære.

or not, for that the ſervant did not all that which his Maſter at the time of his commandment durſt have done, &c. *Quære.*

¶ This Continual Claim is void, for that the ſervant doth leſs then that which is expreſly commanded, and there is no impotency or fear in the Maſter.

Sect. 436.

¶ Item alcuns ont dit que lou home eſt en priſon, & eſt diſſeiſie, & le diſſeiſor morust ſeiſie durant le temps que le diſſeiſee eſt en priſon, per q̄ les tenements diſcendont al heire del diſſeiſor, ils ont dit, que ceo ne noiera my le diſſeiſee que eſt en priſon, mes que il p̄n̄ poit enter, nient obſtant tiel deſcent, pur ceo q̄ il ne p̄uiſoit faire continual claim, quant il fuit en priſon.

ALSO ſome have ſaid that where a man is in priſon and is diſſeiſed, and the Diſſeiſor dieth ſeiſed during the time that the Diſſeiſee is in priſon, whereby the tenements deſcend to the Heir of the Diſſeiſor, they have ſaid that this ſhall not hurt the diſſeiſee which is in priſon, but that he well may enter, notwithſtanding ſuch a deſcent, becauſe he could not make Continuall Claim when he was in priſon.

¶ *Quant home eſt en priſon & eſt diſſeiſie.* For if he be diſſeiſed when he is at large, and the deſcent is caſt during the time of his impriſonment; this deſcent ſhall bind him, Excuſatur autem quis quod clameum ſuum non appoſuerit, ſi tempore litigii in priſona detentus fuerit, ita quod venire non poſſit, nec mittere, quia nulli vertitur in dubium, & ubi eadem ratio & idem ius erit, ideo videtur quod Excuſari debet quis ſi per vim majorem, vel per fraudem, extra priſonam detentus fuerit, ita quod venire non poſſit, nec mittere, dum tamen hoc per certa judicia probari poterit.

9 H.7.24. Pl.Com.360. Bracton, lib.5. fol.436. Britton, fol. 116. b. Fleta, lib.6. cap.52,53. & lib.6. cap. 7. & 14.

¶ *Pur ceo que il ne poit fair continual claime quant il fuit en priſon.* Here it is to be obſerved, by the Authority of Littleton, that he is not enforced in this caſe by Law to do it by his ſervant, or any other by his warrant or commandment; for things done by Deputy are eſteemed well done, but every man will ſee his own buſineſs moſt effectually ſpeeded and performed; and that it may be once ſpoken for all the reaſon that a man impriſoned ſhall not be bound in this and the like caſes, is, for that by the intendment of Law he is kept (as it is preſumed in Law) without intelligence of things abroad; and alſo that he hath not liberty to go at large to make Entry or claim, or ſeek counſel. And ſo note a diverſity between a Recluſe, who might have intelligence, and a man in priſon.

Pl. Com.360. in Powels caſe.

Sect. 437.

¶ Mes lopinion de touts les Juſtices, P. 11 H. 7. fuit que ſi le diſſeiſin ſoit avant lemp̄riſonment, coment que le mo̅rant ſeiſie ſoit, il eſteant en le priſon, ſon entrie eſt tolle.

BUt the opinion of all the Juſtices, P. 11 H.7. was, that if the diſſeiſin be before the impriſonment, although the dying ſeiſed be, he being in the priſon, his entry is taken away.

¶ This is of a new addition, and miſtaken, for there is no ſuch opinion, P. 11. H. 7. but it is, 9 H. 7. fol. 24. b.

Mirror cap. 3. Britton, fol. 21. Fleta, lib. 1. cap. 28. & lib. 2. cap. 56. Bracton, lib. 2. 2 E. 4. 1. 4 E. 4. 10. 21 E. 4. 73. 11 H. 7. 5. 21 H. 6. 50. 9 H. 4. 3. 21 H. 6. Utlagarie 36. 7 H. 6. 27. 21 E. 4 88. 22 E. 4. 37. 18 E. 3. Villenage 47. 21 E. 4. 37. 33 H. 6. 45. 16. 44 E. 3. Villein 41. 4 H. 4. 19. 11 H. 4. 31. 3 Eliz. Dier 192. 2 Eliz. 176. 5 Eliz. ibid. 223. 19 H. 6. 2. 8 H. 6. 37. 37 H. 6. 19.

¶ *IL reverſera tiel utlagarie.* Nota, the original is, Reverſera tiel utlagarie per Brieſe Error, and ſo it would be amended: for Outlawries may be reverſed two manners of ways, viz. by Plea, or by Writ of Error. By Plea, when the Defendant cometh in upon the Capias utlagatum, &c. he may by Plea reverſe the ſame for matters apparent, as in reſpect of a Superſedeas, Omiſſion of Proceſs, Variance, or other matter apparent in the Record; and yet in theſe caſes ſome hold, That in another Term the Defendant is driven to his Writ of Error.

¶ ET auxi ſi tiel que eſt en priſon ſoit utlage in Action de debt, ou treſpaſs, ou en appeale de Robberie, &c. il reverſera tiel utlagarie envers luy pronounce, &c.

AND alſo if he which is in priſon be outlawed in an Action of Debt, or Treſpaſs, or in an Appeale of Robbery, &c. he ſhall reverſe this outlawry pronounced againſt him, &c.

8 H. 4. 7. 21 H. 7. 13. 10 H. 6. 58. 20 H. 6. 20. 21 H. 6 55. 22 H. 6. 18. 16. 39 H. 6. 1. 33 H. 6 51. 45. 38 H. 6. 33. 21 E. 4. 94. 21 H. 7. 33. 5 H. 7. 1. 12 H. 6. 8. 11 H. 6 67. 19. 1 E. 4. 2. 27 H. 8. 2. 38 Aſſ. pl. 17. Vide Sect. 439.

But for any matters in fact; as death, impriſonment, ſervice of the King, &c. he is driven to his Writ of Error, unleſs it be in caſe of Felony; and there in favorem vitæ he may plead it.

But albeit impriſonment be a good cauſe to reverſe an Outlawry; yet it muſt be by proceſs of Law in invitum, and not by conſent or covin, for ſuch impriſonment ſhall not avoid the Outlawry, becauſe upon the matter it is his own act.

Sect. 438.

5 E. 3. 50. b. 7. H. 6. 38.

¶ THis is evident enough.

Fleta lib. 6. cap. 67. & 24. Vide W. 2. cap. 48. and the expoſition thereof, 2. part Inſtit. 4 E. 2. Diſcent 51.

¶ *Per Brieſe derror.* For he ſhall have no Writ of Diſceit, becauſe the ſummons was according to the Law of the Land, by Dommoners and Meiors, and the Land taken into the Kings hand by the Perior.

¶ AUxy ſi un recoverie ſoit per default vers tiel que eſt en priſon, il avoidera le judgement p Brieſe de Error, pur ceo que il fuit en priſon al temps de le default fait, &c. Et pur ceo que tiels matters de Record ne noyera celuy que eſt en priſon, mes que ils ſerront reverſes, &c. à multo fortiori, il ſemble que un matter en fait, ſ. tiel diſcent ewe quant il fuit en priſon ne luy noyera, &c. ſpecialment pur ceo que il ne puiſſoit aler hors de priſon pur faire Continual Claime, &c.

ALSO if a recovery be by default againſt ſuch a one as is in priſon, he ſhall avoid the judgment by a writ of Error, becauſe he was in priſon at the time of the default made, &c. And for that ſuch matters of Record ſhall not hurt him which is in priſon, but that they ſhall be reverſed, &c. *à multo fortiori*, it ſeemeth that a matter in fact, ſ. ſuch a deſcent had when he was in priſon, ſhall not hurt him, &c. eſpecially ſeeing he could not go out of priſon, to make Continuall Claim, &c.

Per default. Default is a French word, and Defalta is legally taken for Non-appearance in court. There be divers cauſes allowed by Law for ſaving a mans default; as firſt, by Impriſonment, whereof Littleton here ſpeaketh. 2. Per undationem aquarum. 3. Per tempeſtatem. 4. Per pontem fractum. 5. Per navigium ſubſtractum per fraudem petentis; non enim debet quis ſe periculis & infortuniis gratis exponere, vel ſubjicere. 6. Per minorem ætatem. 7. Per defenſionem ſummonitionis per Legem. 8. Per mortem Attornati, ſi tenens in tempore non novit. 9. Si petens eſſoniatus ſit, 10. Si placitum mittatur ſine die. 11. Per Breve de Warrantia Diei. But ſickneſs (as one holds) is no cauſe of ſaving a default, becauſe it may be ſo artificially counterfeited, that it cannot be known.

Bracton, lib. 5. tract. 3. Fleta, lib. 6. cap. 7. 14. 3 H. 6. 46. 38 E. 3. 5. 31 H. 6. Barre. 66. 12 H. 4. 13. 50 E. 3. 9. 3 H. 6. 48. 2 H. 4. 8. 5 H. 7. 3. F. N. B. 17. Brac. lib. 4. f. 367. 369. Glan. lib 1. cap. 8. 28 H. 6. 11. 4 H. 5. Challenge 153. Br. Saver. Def. 45.

¶ *Record.*

¶ *Record.* Recordum is a memorial or remembrance in Rolls of Parchment of the proceedings and acts of a Court of Justice, which hath power to hold a plea according to the course of the Common Law, of real or mixt actions, or of Actions quare vi & armis, or of personal Actions, whereof the debt or damage amounts to forty shillings or above, which we call Courts of Record, and are created by Parliament, Letters Patents, or Prescription. Glanvil lib. 8. cap. 8. Bracton lib. 3. fol. 156. Britton in proœmio & cap. 27.

It is aptly derived of Recordari, which is to keep in memory, to record, as it is said, Quod dicere mihil aliud est quàm recordari; and in the same sense the Poet useth it, Si rite audita recordor. But legally Records are restrained to the Rolls of such only as are Courts of Record, and not the Rolls of inferiour, nor of any other Courts which proceed not secundum legem & consuetudinem Angliæ. And the Rolls being the Records or Memorials of the Judges of the Courts of Record, import in them such incontrolable credit and verity, as they admit no averment, plea, or proof to the contrary. And if such a Record be alledged, and it be pleaded, That there is no such Record, it shall be tried only by it self: and the reason hereof is apparent; for otherwise (as our old Authors say, and that truly) there should never be any end of Controversies, which should be inconvenient. Of Courts of Record you may read in my Reports; but yet during the Term wherein any judicial act is done, the Record remaineth in the breast of the Judges of the Court, and in their remembrance, and therefore the Roll is alterable during that Term, as the Judges shall direct; but when that Term is past, then the Record is in the Roll, and admitteth no alteration, averment, or proof to the contrary. Cicero. Virgil. P^l. Com. 79. b. Mich. 7. & 8 Eliz. Dyer 242. 17 E. 3. 49. 37 H. 6. 21. b. 11 H. 4. 26. b. 21 H. 6. 34 Error Br. 73. 7 H. 7. 4. 19 Ass. 7. lib. 4. fo. 32. in Rawlins Case. Glanvil lib. 8. cap. 8. Bracton lib. 3. fol. 156. Britton, cap. 27. Lib. 6. fo. 11. Gentlemans Case, & 30. 45. Lib. 7. fol. 30. Lib. 8. fol. 60. b. & 67. 2. 7 H. 6. 28. 19 H. 6. 9.

If a Grant by Letters Patents under the great Seal be pleaded and shewed forth, the adverse party cannot plead Nul tiel Record; for that it appears to the Court, that there is such a Record: but inasmuch as it is in nature of a conveyance, the party may deny the operation thereof, therefore he may plead Non concessit, and prove in evidence that the King had nothing in the thing granted, or the like, and so it was adjudged. But to return to Littleton: What then? Shall a man that is in prison be priviledged from Suits of Outlawries? Nothing less; for if the Tenant or Defendant be in prison, he shall upon motion by order of the Court, be brought to the Bar, and either answer according to Law, or else the same being Recorded, the Law shall proceed against him, and he shall take no advantage of his imprisonment. 18 Eliz. Dyer 353. 3 Mar. Dyer 129. Pl. Com. 232. Seignior Berkleys Case. 16 H. 7. 11. b. 22 H. 8. Record Br. 65. 39 H. 6. 4. 3 Eliz. Dyer 187. Lib. 6. fo. 15. Edens case. Mic. 31. & 32 Eliz. Rot. 365. In Banke le Roy inter Eden, & Franklin, & Brown. 7 H. 6. 28. 8 H. 6. 16. Vide Sect. 418.

¶ A multo fortiori. Here is an argument, A minori ad majus, and the force of our Authors argument is this. If a man in prison shall not be bound by a recovery by default for want of answer in Court of Record in a real Action, which is a matter of Record (the height and strength whereof hath been somewhat touched (à multo fortiori, a Descent in the Countrey, which is matter of deed, shall not for want of Claim bind him that is in prison. And as the argument à minori ad majus doth ever hold (as our Author hath already told us) affirmatively, so the argument à majori ad minori, doth ever hold negatively, as our Author here teacheth us: and the reason hereof is this, Quod in minori valet, valebit in majori; & quod in majori non valet, nec valebit in minori.

¶ *Pur ceo que il ne poit aler hors de prison, &c.* By this it appeareth, That a man in prison by process of Law ought to be kept in salva & arcta custodia, and by the Law ought not to go out, though it be with a Keeper, and with the leave and sufferance of the Gaoler: but yet imprisonment must be custodia, & non pœna; for Carcer ad hominis custodiendos, non ad puniendos dari debet.

Sect. 439.

¶ EN meisme le manner il semble, lou home est hors du Royalme, en service le Roy, pur besoigne del Royalme, si tiel hõe soit disseisie quant il est en service le Roy, & le disseisor mort seisie, le disseisee

IN the same manner it seemeth, where a man is out of the Realm, in the Kings service for the business of the Realm if such a one be disseised when he is in service of the King, and the Disseisor dyeth,

¶ *Hors de Royalme,* (id est) Extra Regnum; as much to say, as out of the power of the King of England, as of his Crown of England: for if a man be upon the Sea of England, he is within the Kingdom or Realm of England and within the ligeance of the King of England, as of his Crown of England: And yet alium mare is out of the jurisdiction of the common 6 R. 2. Protest. 46. Vide Sect. 198. 440, 441.

Rot.Pat. { 8 H. 3. 9 H. 3. 15 H.3.
Temps. E.1. Avowry 192. Rot.Vaſcon. 32 E.1.m.8. Pat. 23 E.1.1. pars. Pat. 20 E.2. 8 E.2. Coron.399. Stanf. Pl. Coton. 51.

Law, and within the juriſdiction of the Lord Admiral, whoſe juriſdiction is very ancient, and long before the reign of Edward the third, as ſome have ſuppoſed, as may appear by the Laws of Oleron, (ſo called, for that they were made by King Richard the firſt when he was there) that there had been then an Admiral time out of mind, and by many other ancient Records in the reigns of Henry the third, Edward the firſt, and Edward the ſecond, is moſt manifeſt.

vide Sect. 677.

See hereafter in another caſe which Littleton puts in his Chapter of Remitter, where he ſaith, Ouſter le mere, beyond the Sea. This great Officer in the Saxon Languages is called, Aen mere al (i) over all the ſea, Præfectus maris ſive claſſis, archithalaſſus: and in ancient time the office of the Admiralty was called Cuſtodia marinæ Angliæ, or Maritimæ Angliæ.

3 R.3. Cont.Claime 13. 4 E.3.46.

And note, Littleton ſaith not, Beyond the ſea, or extra quatuor maria, for a man revera may

ſeiſie eſteant en le ſervice le Roy, que tiel diſcent ne grieveroit le Diſſeiſée, mes pur ceo que il ne puiſſoit faire Continual Claim, il ſemble a eux, que quant il vient en Engleterre, il poit enter ſur l'heir le Diſſeiſor, &c. Car tiel home reverſera un utlagarie pronounc̃ ẽvers luy durant le temps que il fuit en le ſervice le Roy, &c. Ergo a multo fortiori, avera aid & indempnitie per la Ley en lauter caſe, &c.

ſeiſed, &c. the Diſſeiſee being in the Kings ſervice, that ſuch deſcent ſhall not hurt the Diſſeiſee; but for that he could not make Continual Claim, it ſeems to them that when he cometh into *England* he may enter upon the Heir of the Diſſeiſor, &c. for ſuch a man ſhall reverſe an Outlawry pronounced againſt him during the time that he was in the Kings ſervice, &c. Therefore *à multo fortiori*, he ſhall have aid and indempnity by the other caſe, &c.

be infra quatuor maria, and yet out of the Realm of England. But infra quatuor maria, or extra, is taken by conſtruction to be within the Realm of England, or the Dominions of the ſame.

But here a queſtion may be demanded; What if a man be out of the Realm, and a Recovery is had againſt him in a Præcipe by default, whether ſhall he avoid it in a Writ of Error, as well as he ſhould do the Outlawry, or if he had been impriſoned at the time of ſuch recovery by default? And it ſeemeth that he ſhall not avoid the recovery; for by that means a man might be infinitely delayed of his Freehold and Inheritance, whereof the Law hath ſo great a regard. And few or none go over, but it is either of their own free will or by ſuit, for what cauſe ſoever; and he is not in that caſe without his ordinary remedy, either by his Writ of higher nature, or by a Quod ei deforceat. But Outlawry in a perſonal Action ſhall be avoided in that caſe, quia de minimis non curat Lex; and otherwiſe he ſhould be without remedy. See Section 437. and note the diverſity between that caſe of the impriſonment, and this of being beyond ſea. And Littleton putteth the caſe of impriſonment, and omitteth the being beyond ſea here: neither have I ſeen any Book to warrant, That he that is beyond ſea ſhall in this caſe avoid the recovery by default.

Bract. lib.5. fol.436.

¶ *En ſervice le Roy.* Bracton ſheweth, That the exception of being beyond ſea is, quia fuit in ſervitio Domini Regis ultra mare, viz. apud talem locum, and that caſe is clear: but you ſhall hear the opinion of Bracton in this Section, where he is not in the ſervice of the King.

Sect. 440.

Brac.l.5.fol.436. b. & 163. Brit fo.21.216,217. Flet. lib.6. cap.52,53. 13 H.4. Trial 6. 9H.4.3. 21 H.6. Error 27. 33 H.6.1. 21 H.6.34. 26 H.8. cap.18. 5. & 6 E.6. cap.11.

¶ AND herewith the ancient law of England is agreeable with Littleton, and the Law at this day. So as it is Verus & conſtans opinio, Excuſatur etiam quis quod clameum

¶ Item, auters ont dit, que ſi aſcun ſoit hors du Royalm coment que il ne ſoit en ſervice le Roy, ſi

Alſo others have ſaid, that if a man be out of the Realm, though he be not in the Kings

tiel

tiel home eſteant hors de le Royalme, eſt diſſeiſie en terres ou tenements deins le Royalme, & le diſſeiſor deby ſeiſie, &c. le Diſſeiſee eſteant hors du Royalme, il ſemble a eux que quant le diſſeiſee, vient diens le Royalme, que il poit enter ſur le heire le diſſeiſor, & ceo ſemble a eux per deux cauſes. Un eſt, que celuy que eſt hors du Royalme ne poit aver conuſans del diſſeſin fait a luy per entendement de ley, nient pluis que choſe fait hors du Royalme poit eſtre try deins le Royalme per le ſereement de 12. & de compeller tiel home per la ley de faire continual claime, le quel per lentendement de le ley ne poit aver aſcun notice, ou conuſance de tiel diſſeiſin, ceo ſerra inconvenient, & noſmement quant tiel diſſeiſin eſt fait a luy quant il eſt hors du Royalme, & aury le moyant ſeiſie fuit quant il fuit hors du Royalme: Car en tiel caſe il ne poit per nul poſſibility ſolonqs common preſumption faire continual claime. Mes auter Service; if ſuch a man being out of the Realm be diſſeiſed of Lands or Tenements within the Realm, and the Diſſeiſor die ſeiſed, &c. the Diſſeiſee being out of the Realm, it ſeemeth unto them, that when the Diſſeiſee cometh into the Realm, that he may well enter upon the heir of the diſſeiſor, &c. and this ſeemeth unto them for two cauſes: One is, that he that is out of the Realm cannot have knowledg of the Diſſeiſin made unto him by underſtanding of the Law, no more then that a thing done out of the Realm may be tryed within this Realm by the oath of 12. men, & to compel ſuch a man to make continual claim which by the underſtanding of the Law can have no knowledge or conuſance of ſuch Diſſeiſin made or done; this ſhal be inconvenient, namely, when ſuch a diſſeiſin is done unto him when he was out of the Realm, and alſo the dying ſeiſed was done when he was out of the Realm; for in ſuch caſe he may not by poſſibility after the common non appoſuerit, ut ſi toto tempore litigii fuit ultra mare quacunque occaſione. And this is alſo agreable with our year Books.

¶ *Nient pluis que choſe fait hors del royalm poit eſtre try deins le royalm per le ſerement de* 12.

And in this rule of Law there is warily and truly put by Littleton, theſe words (by the oath of twelve men) meaning by a Jury. For by certificate a thing done beyond ſea may be tryed, as Littleton himſelf, Sect. 102. hath ſet down. And all matters done out of the Realm of England concerning warre, combate, or deds of armes, ſhall be tryed and termined before the Conſtable and Marſhall of England, before whom the trial is by witneſſes, or by combate; and their proceeding is according to the civil Law, and not by the oath of twelve men, as Littleton here ſpeaketh. 42 E.3. 2. & 3. Vide Sect.102. 1 H.4. ca.14. 13 H.4. fol.4. 48 E.3.2. & 3.

This rule here rehearſed by Littleton, is worthy explication. If an alien (for example, born in France) bring a real Action, and the tenant plead that the Demandant is an alien, born under the obedience of the French King, and out of the ligeance of the King of England; ſhall this caſe want tryal, becauſe the matter alledged is out of the Realm? then by the fiction of this plea, no Demandant ſhal recover; therefore in this caſe the Demandant ſhall reply, that he was born at ſuch a place in England, within the Kings ligeance; and hereupon a Jury of 12. ſhall be charged, and if they have ſufficient evidence that he was born in France, or in any other place out of the Realm, then ſhall they find, that he was born out of the Kings allegeance; and if they have ſufficient evidence that he was born in England or Ireland or Jerſey, or Jerſey, or elſewhere within the Kings obe- 20 E.3. averment 34. 27 Aſſ.24. 32 H.6. 25. 13 E.b.15. 7 H.6.14. 1 R.3.4. 6 H.7.6. 7 H.7.8. F.N.B.196. 29 Aſſ.11. 13 E.1. mord. 47. 12 H.3. ib. 55. Lib.7. fol.26, 27. Calvins caſe. Lib.6. fol. 47. Dowdales caſe.

dience, they ſhall find that he was born within the Kings ligeance. And this hath ever been the pleading and manner of trial in that caſe. And ſo it is in the caſe that Littleton here putteth; if a man in avoidance of a fine or a deſcent alledge that he was out of this Realm, in Spain, at the time of levying of the fine, and at the time of the diſſeiſin and deſcent; the adverſe party may alledge that he was at ſuch a place in England, &c. whereupon iſſue ſhall be taken; and then in evidence he may prove that he was out of the Realm, &c. which upon ſufficient evidence the Jury ought to find. And in both theſe caſes, and the like, in a ſpecial verdict the Jury may find that he was born beyond Sea, or was beyond Sea, at that time, &c.

ment ſerroit ſi tiel diſſeiſée fuit deins le Royalme al temps de le diſſeiſin, ou al temps del mozant del diſſeiſour.

preſumption make continual claim; but otherwiſe it ſhould be if the Diſſeiſee were within the Realm at the time of the Diſſeiſin, or at the time of the dying ſeiſed of the Diſſeiſor.

The Statute of 25 E. 3. De proditionibus, doth declare, that it is Treaſon by the Common Law to adhere to the enemies of the King within the Realm, or without; if he be thereof probablement attaint of overt fact, and that he ſhall forfeit all his lands, &c. A man muſt not imagine that ſeeing by the Common Law declared by authority of Parliament, that adhering to the Kings enemies without the Realm is high Treaſon, and that the Delinquent may be attainted thereof, &c. that this ſhould want trial; for then the judgment of the Common Law, and declaration of the Parliament ſhould be illuſory, which no well-adviſed man will think, in a matter of ſo great a conſequent. But certain it is, that for neceſſity ſake the adherency without the Realm muſt be alledged in ſome place within England. And if upon evidence they ſhall find any adherency out of the Realm, they ſhall find the Delinquent guilty: But moſt commonly they indited him (if he had lands) in ſome county where his land did lye, that were to be forfeited, and this, as appeareth in our Books, was the common uſe. And ſo it is declared by the Statute (*) of 35 H. 8. and that it ſhall be tried by twelve men of the county, where the Kings Bench ſhall ſit, and be determined before the Juſtices of that Bench, or elſe before ſuch Commiſſioners, and in ſuch ſhire of the Realm, as ſhall be aſſigned by the Kings Majeſties Commiſſion; and this Statute for this point remains in force at this day; and ſo it was reſolved (a) by all the Judges in my time, viz. in 33 Eliz. in the caſe of Orurke. And An (b) 34 Eliz. in Sir John Perots caſe, done in Ireland, for that is out of the Realm of England; and the caſe (c) in Mich. 19. & 20 Eliz. was utterly denied; and Sir Chriſtopher Wray himſelf (who is ſuppoſed to give his opinion in that caſe) proteſted that he never gave any ſuch opinion, but did hold the contrary. When part of the Act eſpecially the original, is done in England, and part out of the Realm; that part that is to be performed out of the Realm, if iſſue be taken thereupon ſhall be tried here by 12. men, and thoſe twelve men ſhall come out of the place where the Writ is brought. For example (which ever doth illuſtrate) it was covenanted by Indenture, by Charter party, that a Ship ſhould ſaile from Blackney Haven in Norfolk, to Muttrel in Spain, and there remain by certain days.

5 R. 2. tryal 54.

(*) 35 H. 8. cap. 2. Stanford. pl. cor. 90.

(a) 33 Eliz. caſe Orurk.
(b) 34 Eliz. caſe de Sir John Perot.
(c) Mich. 19. & 20 Eliz. Dier 360.

48 E. 3. 3. 11 H. 7. 16. 1 R. 3. 4.

In an Action of covenant brought upon this Charter party; the Indenture was alledged to be made at Thetford in the county of Norfolk; and upon pleading the Iſſue was joyned, whether the ſaid Ship remained at Muttrel in Spain by the ſaid certain days. And it was adjudged that this Iſſue ſhould be tryed at Thetford where the action was brought, becauſe there the contract took his original by making of the Charter party; and ſo hath it been often adjudged in ſuch like caſe.

Paſch. 28 Eliz. in action de covenant inter Evangeliſt. Conſtantine Pl. & Hughgyn defendant in the Kings Bench. Lib. 6. f. 47. Dowdales caſe Vide 32 H. 6. 25. 48 E. 3. 3. 11 H. 7. 16. 2 E. 2. Obligation 15.

In obligation made beyond the Seas may be ſued here in England, in what place the Plaintiff will: what then if it bear date at Burdeaux in France? where ſhall it be ſued? And anſwer is made, that it may be alledged to be made In quodam loco vocat. Burdeaux in France, in Iſlington in the county of Middleſex, and there it ſhall be tryed; for whether there be ſuch a place in Iſlington or no, is not traverſable in that caſe. Theſe points are neceſſary to be known, in reſpect of the variety of opinions in our Books: And of theſe thus much ſhall ſuffice; and now is Littleton worthy to be heard.

¶ *Per entendement de le ley.* Vide, for intendment of Law, Sect. 99. 100. 110. 293. 377. 393. 406. 367. 462, 463. &c. 439.

Entendement de le ley.

¶ *Ceo ſerra inconvenient.* Here alſo, as hath been often ſaid, appeareth, that argumentum ab inconvenienti, is ſtrong in Law.

Vide Sect. 269.

¶ *Auterment eſt ſi le diſſeiſee fuit deins le royalm al temps del diſſeiſin, &c.* So as if a man be diſſeiſed before he goeth over Sea, or cometh into the Realm again before the Deſcent, the Deſcent ſhall take away his entry.

Sect.

Sect. 441.

¶ UN auter matter ils allegeont pur prober que devant lestatute fait en le temps de Roy E. 3. An. 34. cap. 16. de son raigne, per quel estatute nonclaim est ouste, &c. le ley fuit tiel, que si un fine soit levie de certaine terres ou Tenements, si alcun que fuit estrange al fine avoit droit daver & recover mesmes les terres ou tenements, si ne venust & fist son claime a ceo deins lan & le jour procheine apres le fine levie, il serra barre a touts jours, Quia dicebat', finis finem litib' imponebat. Et que la ley fuit tiel, il est prove per lestatute de Westminster. 2. De donis conditionalibus, lou il est parle que si fine soit levie de les tenements en taile, &c. Quod finis ipso jure sit nullus, nec habeant hæred', aut illi ad quod spect' reversio (licet fuerint plenæ ætat', in Anglia, & extra prisonam) necessitat' apponere clameum suum, &c. Issint ceo

ANother matter they alledge for a proof, that before the Statute of King *Edward* the Third, made the 34. year of his Raign, by which Statute Nonclaim is ousted, &c. the law was such, that if a fine were levied of certain Lands or Tenements, if any that was a stranger to the fine had right to have and to recover the same Lands or Tenements, if he came not, and made his claim thereof within a year and a day next after the fine levied, he shall be barred for ever, *Quia dicebatur, quod finis finem litibus imponebat.* And that the Law was such, it is proved by the Statute of Westminster the 2. *De donis conditionalibus*, where it is spoken, if the fine be levied of Tenements given in the tail, &c. *Quod finis ipso jure sit nullus, nec habeant hæredes, aut illi ad quos spectat reversio (licet plenæ ætatis fuerint, in Anglia, & extra prisonam) necessitat' apponere clameum suum.* So it is proved,

¶ HEre it appeareth what the Common law was before the said Statute of Non-claim upon a fine levied. But now since Littleton wrote, by the Statute of 4 H. 7. Five years after Proclamations made upon the fine are given to him that right hath to make his Claim, or pursue his Action, where the Common Law gave him but a year and a day. But this Statute of 4. H. 7. extends onely to Fines, and not to Non-claim upon a Judgment in a Writ of right, and therefore the said Statute of 34 E. 3. here cited by Littleton, which ousteth Non-claim onely to fines levied, extendeth not to a Judgment in a Writ of right at this day; and therefore the common law in that case remaineth to this day, viz. that Claim must be made within a year and a day after Judgment. Also if a fine be levied without Proclamations, or without so many as the Law requireth, then the Statute of Nonclaim doth extend to such a fine.

34 E.3. cap.16.

4 H.7. cap.24.

See as well this Statute as the Statute of 32 H.8. cap.36. well expounded in my reports. Lib.2. fol. 44, 45. &c. case del fines per totum. lib.1. fol. 96, 97. in Shelleyes case lib.2. fol. 93. Binghams case lib.8. fol. 100. Lechfords case lib.9. fol.139. 140, 141. Beaumonds case lib.10.f.49.b. Lampets case, & 99. a. lib.9. fol. 105, 106. Margaret Podgers case. lib.5. fol.124. Saffyns case lib.10. fol 96, 97. Seymors case lib.8. fol.72. Grosseyes case lib.11. fol.69. 71.78. Pl. Com. in Smith & Stapl. case, & in Stowes case, & Howels case, & Glanvil. lib.13. cap.11. Bract.435. Fleta. lib.6. cap.53. Brit.216.

¶ *Dicebatur finis, quia finem litibus imponebat.* Here you may observe the Etymologie of a fine. And herewith agreeth (a) Antiquity. Finis ideo dicitur finalis concordia, quia imponit finem litibus. And after the example (b) of Littleton, it is good to search out the Etymology or right derivation of words for ignoratis terminis, ignoratur & ars, as hath been often observed in other places. And the Civilians call this judicial concord Transactionem Judicialem de re immobili.

(a) Glanvil. lib.8. cap.3. Bract. lib.5. fol.435. Fleta, lib.6. cap.52.53.

(b) Etymologies, &c. Vide Sect.74.174.194.442. 520.592.

¶ *Licet*

¶ *Licet fuerit plenæ ætatis, in Anglia, & extra prisonam.* In this Act of 13 E. 1. De donis conditionalibus is one omitted, who is added in the Statute De modo levandi fines, viz. & sanæ memoriæ. (c) But a Feme covert had no privilege of non-claim at the Common Law, as some have said, because she had a husband that might make claim for her. But yet Bracton saith; Item excusatur uxor quæ sub potestate viri supposita quod clameum non apposuerit, licet mittere possit. And citeth a judgment in the point, Trin. 4 H. 3. in Cusins case. But Fleta saith, Excusatur si fuerit uxor alicujus, si fuerit per virum impedita, quod non potuit apponere clameum. Also they in reversion or remainder expectant upon any estate of freehold, were barred by the Common Law, and yet they could make no claim, because, as hath been said, it belonged to the particular Tenant, and not to them, because their entry was not lawful, which was one of the principal causes of making of the said Statute of 34 E. 3. which ousted Non-claim. But these cases of Coverture, and of them in reversion and remainder, are now without question holpen, and full provision made for the saving of their rights and Titles, by the said Statute of 4 H 7. as by the said Act appeareth.

Stat. de anno. 18 E. 1.

(c) Pl. Com. Stowels case, 359.

Bracton, lib. 5. fol. 436. Britton, fol. 216 b. Fleta lib. 6. cap. 53.

ore prove, que si un estrange home que avoit droit a les tenements, fil fuit hors de Royalme al temps del fine levie, &c. navera damage, coment q̄ il ne fit son claime, &c. coment que tiel fine fuit matter de record. Per greinder reason il semble a eux que un disseisin & discent que est matter en fait, ne ilint trope grievera celuy que fuit disseisie, quant il fuit hors du Royalme al temps de disseisin, & auxy al temps que le disseisor mourust seisie, &c. mes que il vien poit enter, nient contrestant tiel descent.

that if a stranger that hath right unto the tenements, if he were out of the Realm at the time of the fine levied, &c. shall have no damage, though that he made not his claim, &c. though that such fine was matter of record: by greater reason it seemeth unto them, that a Disseisin and descent that is matter indeed shall not so grieve him that was disseised when he was out of the Realm at the time of that disseisin, and also at the time that the Disseisor died seised, &c. but that he may well enter notwithstanding such descent.

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¶ *Arraigne un assise.* To arraigne the Assise is to cause the Tenant to be called to make the plaint, and to set the cause in such order as the Tenant may be enforced to answer thereunto; and is derived of the French word Arraigner, which signifieth to order or set in right place. An Arraignment is sometime called an Astitution, of the Verb Astituo, compounded of Ad & Statuo, that is, to place, or set in order one by another. In the same sense that Littleton here useth it, it is used when an appeal is

¶ Item, Quære si home soit disseisie, & il arraigne un Assise envers le disseisor, & les recognitors de le assise chanta pur le plaintife, & les Justices dassise voyle estre advises de lour judgment, tanq̄ al prochein assise, &c. Et en le dementiers le disseisor mourust seisie, &c. si le dit fuit

Also inquire if a man be disseised, and he arraigne an assise against the disseisor, and the recognitors of the assise chante for the Plaintife, and the Justices of assise will be advised of their judgments until the next assise, &c. and in the mean season the disseisor dieth seised, &c. yet the

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del aſſiſe ſerra priſe en ley pur le dit Diſſeiſæ un continual claime, entant que nul default fuit en luy, &c.

ſaid ſuit of the Aſſiſe ſhall be taken in Law for the Diſſeiſee a continual Claim, inſomuch that no default was in him, &c.

arraigned, both which are arraigned in French, but entred in Latine. And it is to be obſerved, that Littleton ſaith here Arraigne un Aſſiſe, and ſaith not that the Tenant is arraigned, and ſo of the Appeal, for theſe are the ſuits of the Subject, and no man is ſaid to be arraigned but onely at the ſuit of the King, upon an Enditement found againſt him, or other Record wherewith he is charged. And there the arraignment of the priſoner is to take order that he appear, and for the certainty of the perſon to hold up his hand, and to plead a ſufficient plea to the Enditement or other Record, whereupon they which follow for the King may otherwiſe proceed. 2 & 3 E.6. c.24. towards the end. Stanf. Pl. cor. 105. C. 3 H.7. cap.1.

¶ *Juſtices daſſiſe.* Juſtices of Aſſiſe are aſſigned and conſtituted by the King of the Judges and the Sages of the Law, and are called Juſtices of Aſſiſe, for that the writs of Aſſiſe of Novel diſſeiſin, (which in former times were accounted Feſtina remedia, and very frequent and common) were returnable before them to be taken in their proper Counties twice every year at the leaſt, whereupon they had authority to give judgment, and award ſeiſin and execution: and therefore both the number of them in times paſt, and for the greater authority they had then as Juſtices of Niſi prius, (which was to try iſſues only, except in a Quare Impedit, and Aſſiſes De darreine preſentment, in which caſes the Juſtices of Niſi prius might give judgment) they were denominated Juſtices of Aſſiſe: And divers Acts of Parliament have given to them great authority both in Criminal cauſes and common pleas. Theſe Juſtices of Aſſiſe have alſo Commiſſions of Oier and Terminer, of Goal-delivery, and of the peace, of aſſociation, and Si non omnes throughout their whole Circuits, ſo as they are armed with ample, prudent, but yet ordinary juriſdiction; for all their Commiſſions are bounded with this expreſs limitation, Facturi quod ad juſtitiam pertinet ſecundum legem & conſuetudinem Angliæ. And in former times according to the original inſtitution and their Commiſſion, both the Juſtices joyned in common pleas, and pleas of the Crown. Vide Sect.514.233,234. Magna Charta 30 W.2. cap.3.30,39. Stat. de Ebor. cap.3,4. Artic. Sup. Cart. cap. 10. 4 E.3. cap.11. 7 R.2. c. 4. 27 E.1. De finibus c.4. 28 E.1. de appellatis. 4 E.3. cap.2. 2 H.4. ca.8. North. 2 E.3. cap.3. 2 E.3.c.5. 14 H.6.c.1. 21 H.6.c.10. 3 H.7.ca.1. 33 H.8.c.9. 34. & 35 H.8. c.14. 2. & 3 E.6. c.24. 1 E.6.ca.7. 2 Mar. Dyer 59. 3. & 5 Eliz. Dyer 203.

¶ *Si le dit ſuit del aſſiſe ſerra priſe en ley, &c. un continual claime.* And it is holden at this day that it ſhall amount to a Claim, for that there was no default in him, as Littleton ſaith. (d) Some have objected, that if the bringing of an Aſſiſe ſhould amount to continual Claim, and every continual Claim made by the Diſſeiſee deſt the poſſeſſion and freehold in him, therefore if bringing the Aſſiſe, &c. ſhould amount to a continual Claim, that then the Writ ſhould abate. But hereunto it hath been anſwered in this Chapter, that a continual Claim is an entry by conſtruction of Law for the advantage of the Diſſeiſee, but not for his diſadvantage. (d) See before in this Chapter, Sect.419. Vid. Sect. 416.

In a Writ of entry Sur diſſeiſin againſt one, ſuppoſing that he had not entred but by S. who diſſeiſed him, the Tenant ſaid that S. died ſeiſed, and the land deſcended to him, and prayed his age; the Plaintiff counterpleaded his age, for that he arraigned an aſſiſe againſt S. who died hanging the Aſſiſe, and he was ouſted of his age, for that the bringing of the Aſſiſe amounted to a Claim. 24 E.3.25. 9 E.2. age 141. 15 E.3. Counter plea de gar. 5.

If Tenant in Dower alien in fee with warranty, and the Heir in the reverſion bring a Writ of entry In caſu proviſo, &c. and hanging the plea the Tenant dieth, the Heir ſhall not be rebutted or barred by this warranty, for that the Præcipe did amount to a continual Claim. And herewith agreeth (*) Antiquity, Et ſi clameum non oppoſuerit, ſufficit tamen ſi ille vel Anteceſſor ſuus faciat quod tantundem valeat,, ut ſi placit' moverit tenen' vel fecerit rem litigioſam; quia ſicut plus eſt facto appellare, quàm verbo, ita plus eſt clameum opponere facto, quam verbo: Et ad hoc facit de Termino Sanctæ Trinitatis, Anno regni regis H.3.15. in com. Hunt. de quadam Guldeburga, cui objectum fuit, quod clameum non oppoſuit, & ipſa reſpondit, quod fecit quod tantundem valet, quia tempore finis facti implacitavit tenentem per aliud breve, &c. 3 E.3. tit. garrantie 62. (*) Flet. lib.6. cap.52. Bract. lib.5. fol.436.

If the goods of a Villain (before any ſeiſure made by the Lord) be diſtreined, the Lord may have a Replevin; and notwithſtanding before the bringing of the Writ he had no property, yet the very bringing of the Writ amounts to a claim of the goods, and veſteth the property in the Lord. 33 E.3. Replevin.43. 42 E.3.18. b. 9 H.6.23.

¶ *Entant que nul default fuit en luy, &c.* Hereby it is implyed, that our Author inclined to this opinion that it ſhould amount to a Claim, for that no default was in him. Et nemo debet rem ſuam ſine facto aut defectu ſuo amittere, as the rule is.

Sect.

Sect. 443.

¶ HEre first it is to be obſerved, that albeit the Freehold and inheritance is in this caſe in no perſon, but in abeyance or in conſideration of Law, yet an entry and Claime by one that hath no right ſhall gain the inheritance by wrong. For here Littleton ſaith, and of ſuch eſtate died ſeiſed, &c. And ſo it is in caſe of a Biſhop, Parſon, Vicar, Prebend, or any other ſole Corporation. And in the ſtatute of Marlebridge it is called an Intruſion.

Marleb. cap. 28.

Secondly, that ſeeing by the death of the Abbot (which is the act of God) no perſon is able to make Continual Claime, therefore a Deſcent during that time ſhall not prejudice the Succeſſor, for as hath been ſaid, Impotentia excuſat Legem. If an uſurpation be had to a Church in time of vacation, this ſhall not prejudice the Succeſſor, to put him out of poſſeſſion, but that at the next avoidance he ſhall preſent.

F.N.B. 34 m. W. 2. cap.

¶ *Nient pluis que ils ſont able de ſuer Action, &c.* Here that which hath in this Chapter been ſaid is confirmed, viz. That the entry or continual Claim muſt purſue the Action.

¶ *Car le Covent neſt forſque vn mort perſon, &c.* This is Ratio una, but not unica: for though the reſt of the Corporation be no more perſons, as the Chapter in caſe of Deane and Chapter, or the Commonalty in caſe of a Mayor and Commonalty, yet can or they when there is no Dean or Mayor make claim, becauſe they have neither ability nor capacity, to take or to ſue any Action, as our Author here ſaith.

¶ *Car en temps de*

¶ ITem, Quære ſi un Abbe de un Monaſterie morust, & durant l' temps de vacation, un home tortiouſement enter en certaine parcel d terre del Monaſtery, claymant la terre a luy & a ſes heires, & de tiel eſtate morust ſeiſie, & la ter diſcendiſt a ſon heire, & puis apres un eſt elect et fait Abbe de meſme la Monaſterie, ſi meſme l'Abbe poit enter ſur le heire ou nemy. Et il ſemble a aſcuns que l'Abbe bien poit enter en ceo cas, pur ceo que le Covent en temps de vacation ne fuit aſcun perſon able de fair Continual Claim, car nient pluis que ils ſont perſon able de ſuer Action, nient pluis ils ſont able de faire Continual Claim, car le Covent neſt forſque un mort corps ſans Teſte, car en temps de Vacation un graunt fait a eux, ou per eux eſt void, et en ceſt caſe l'Abbe ne poit aver Briefe Dentre ſur Diſſeiſin enders

ALſo, inquire if an Abbot of a Monaſtery die, and during the time of vacation, a man wrongfully entreth in certain parcels of land of the Monaſtery, claiming the land unto him and his heirs, and of that eſtate dieth ſeiſed, and the land deſcendeth unto his Heirs, and after that an Abbot is choſen, and made Abbot of the Monaſtery, a queſtion is, if the Abbot may enter upon the Heir, or not. And it ſeemeth to ſome, That the Abbot may well enter in this caſe, for this that the Covent in time of vacation was no perſon able to make continual Claim; for no more then they be perſon able to ſue an Action, no more be they able to make continual Claim; for the Covent is but a dead body without Head; for in time of vacation a Grant made unto them or by them is void; and in this caſe an Abbot may not have a Writ of *Entrie* upon *Diſſeiſin* againſt the Heir, for

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le heire, pur ceo que il ne fuit unques diſſeiſie, & ſi Labbe ne puiſſoit enter en ceo caſe, donques il ſerra mis a ſon Briefe de Droit, &c. le quel ſerra trope dure pur le meaſon, per que ſemble a eux, que Labbe bien pott enter, &c.

this, That he was never diſſeiſed. And if the Abbot may not enter in this caſe, then he ſhall be put unto his Writ of Right, &c. which ſhall be hard for the Houſe. By which it ſeemeth to them, that the Abbot may well enter, &c.

Quæras de dubiis, legem bene diſcere ſi vis:
Quærere dat ſapere, quæ ſunt legitima vere.

Quæras de dubiis, legem bene diſcere ſi vis:
Quærere dat ſapere, quæ ſunt legitima vere.

vacation un Graunt fait a enx ou per enx, eſt void, &c. And the reaſon is, becauſe the body politique, which is capable, is not complete, but wanteth the Head. But this is to be underſtood of an immediate Grant; for if during the vacation of the Abathy of Dale, a Leaſe for life, or a gift in Tail be made, the remainder to the Abbot of Dale and his Succeſſors, this remainder is good, if there be an Abbot made during the particular eſtate. 2 H.7.13. 40 Aſſiſe, 34 E.3. Garrantie 63.

If there be Mayor and Commonalty of D. and the Mayor dieth, a Grant made to the Mayor and Commonalty of D. is void, for the cauſe aforeſaid; but in that caſe if a Leaſe for life be made, the remainder to the Mayor and Commonalty of D. the remainder is good, if there be a Mayor elected during the particular eſtate.

¶ *Poit enter, &c.* Here by this (&c.) is implied, or make his continual claim in ſuch ſort as hath been before expreſſed.

¶ Quæras de dubiis, Legem bene diſcere ſi vis:
Quærere dat ſapere, que ſunt legitima vere.

Here Littleton expreſſeth an excellent means to attain to the reaſon of the Law, by enquiring of, and conference had with learned men, of doubtful caſes.

Inter cuncta leges, & percunctabere Doctos. Horace.

For as Collatio peperit artes, ſo Collatio perficit artes: And this muſt be continual; for as knowledge increaſeth, ſo doubts therewith increaſe alſo. Creſcente ſcientia, creſcunt ſimul & dubitationes.

And here Littleton citeth very aptly two verſes; for it is truely ſaid, That Authoritates Philoſophorum, Medicorum, & Poetarum, ſunt in cauſis allegandæ & tenendæ: And our Author doth cite a Verſe for memory, but it is worthy of memory.

Chap. 8. *Of Releaſes* *Sect.* 444.

¶ Releaſes ſont en divers mãers, ceſtaſcavoir Releaſes de tout le droit que home ad en terres ou Tenements, & Releaſes de Actions perſonals & reals, &

Releaſes are in divers manners, ſ. Releaſes of all the right which a man hath in lands, or Tenements, and Releaſes of Actions perſonals and Reals, and other things.

¶ Here our Author beginneth with a diviſion of releaſes. Vide Mir. cap.2. Sect.27. Vide Brit.101. Bract. l.5. Tract. de Except. & Lib.4. fol.318. b. Fleta, lib.cap.14.

These words muſt be referred thus: Releaſes are of two ſorts, viz. A Releaſe of all the right which a man hath either in Lands and Tenements, or in Goods and Chattels: or there is a Releaſe of Actions Real of or in Lands or Tenements: or Perſonal, of or in

Vide Sect 492.

in Goods or Chattels: or mixt, partly in the Realty, and partly in the Perſonalty.

¶ *Releaſe.* Relaxatio: Of the Etymology of this word you have heard before. Fleta (a) calleth it, Charta de quieta clamantia.

(a) Fleta, ubi ſup.

¶ Noverint univerſi per præſentes, &c. Here Littleton ſheweth Preſidents of Releaſes of right: and Preſidents do both teach and illuſtrate, and therefore our Student is to be well ſtored with Preſidents of all kinds.

Bract. lib. 4. fol. 308. Fleta, ubi ſup. 9 H. 6. 35. 24 E. 3. 27. 13 H. 4. Entr. congeab. 57.

¶ Remiſiſſe, relaxaſſe, & quietum clamaſſe. Here Littleton ſheweth, That there be three proper words of Releaſe, and be much of one effect: beſides, there is Renunciare, Acquietare; and there be many other words of Releaſe: as if the Leſſor grants to the Leſſee for life, that he ſhall be diſcharged of the Rent, this is a good releaſe, Vide Sect. 532.

And it is to be underſtood, That there be Releaſes in Deed, or Expreſſe Releaſes, whereof Littleton here hath ſhewed an example. Theſe Expreſſe Releaſes muſt of neceſſity be by Deed. There be alſo Releaſes in Law, and they are ſometimes by Deed, and ſometimes without Deed. As if the Lord diſſeiſe the Tenant, and maketh a Feoffment in Fee by Deed or without Deed,

27 H. 8. 29. of an uſe. 24 H. 6. 44. of an attaint 3 E. 3. 28. 21 E. 4. 81. Pl. Com. Delameres caſe.

this is a releaſe of the Seigniory. And ſo it is, if the Diſſeiſee diſſeiſe the heir of the Diſſeiſor, and make a Feoffement in Fee by Deed or without Deed, this is a releaſe in Law of the right; and the ſame Law it is of a right in Action.

8 E. 4. 3. 21 E. 4. 2.

If the Obligee make the obligor his Executor, this is a releaſe in Law of the Action, but the duty remaines, for the which the Executor may retain ſo much goods of the Teſtator.

11 H. 7. 4. 20 H. 7. 29. 8 E. 4. 3.

If the Feme Obligee take the Obligor to husband, this is a releaſe in Law. The like Law is, if there be two Feme Obligees, and the one take the Debtor to husband.

If a Infant of the age of ſeventeen years releaſe a Debt, this is void. But if an Infant make the Debtor his Executor, this is a good releaſe in Law of the Action.

But if a Feme Executrix take the Debtor to husband, this is no releaſe in Law; for that ſhould be a wrong to the Dead, and in Law work a Devaſtavit, which an act in Law ſhall never work. And ſo it was adjudged in the Kings Bench, Mich. 30. & 31. Eliz. in which caſe I was of Counſel.

30 E. 3. 24. 32 E. 3. Tit. Scire fac. 102.

But it is to be obſerved, That there is a diverſity between a releaſe in Deed and a releaſe in Law; for if the heir of the Diſſeiſor make a leaſe for life, and the diſſeiſee releaſe his right to the leſſee for his life; his right is gone for ever. But if the Diſſeiſee doth diſſeiſe the heir of the Diſſeiſor, and make a leaſe for life, by this releaſe, in Law the right is releaſed but during the life of the leſſee: for a releaſe in law ſhall be expounded more favorable according to the intent & meaning of the parties; then a releaſe in Deed, which is the act of the party, and ſhall

auters choſes. Releaſes de tout le droit que homes ont en terres ou Tenements, &c. ſont communement fait en tiel form ou de tiel effect.

Releaſes of all the right which men have in Lands and Tenements, &c. are commonly made in this forme, or of this effect.

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¶ Noverint univerſi per præſentes, me A. de B. remiſiſſe, relaxaſſe, & omnino de me & hæredibus meis quietum clamaſſe: *vel ſic*, Pro me & hæredibus meis quietum clamaſſe C. de D. totum jus, titulum, & clameum quæ habui, habeo, vel quoviſmodo in futur', habere potero, de & in uno meſſuagio cum pertinentiis in F. &c. Et eſt alcaboire, que ceux Verbs, Remiſiſſe, & quietum clamaſſe, ſont de un tiel effect, ſicome tiels Verbs, Relaxaſſe.

Know all men by theſe Preſents, That I A. *of* B. *have remiſed, releaſed, and altogether from me and my Heirs quiet clained:* or thus, *For me and my Heirs quiet claimed to* C. *of* D. *all the right, title, and claime which I have, or by any means may have, of and in one meſſuage, with the appurtenances in* F. *&c.* And it is to be underſtood, that theſe words, *Remiſiſſe & quietum clamaſſe*, are of the ſame effect as theſe words, *Relaxaſſe.*

ſhall be taken moſt ſtrongly againſt himſelf; and ſo in the caſe aforeſaid, where the Debtor is made Executor.

¶ Totum jus, titulum & clameum. But note, that Jus or right in general ſignification, includeth not only a right for the which a Writ of Right doth lie; but alſo any title or claim either by force of a Condition, Mortmain, or the like, for the which no action is given by Law, but only an entry.

Sect. 446.

¶ Item, ceux paroles que ſont communement mis en tiels faits de releases, ſ. (quæ quoviſmodo in futurum habere potero) ſont ſicome voides en le ley, car nul droit paſſa per un releas, forſque le droit que le releſſor ad al temps de le releas fait. Car ſi ſoit pier & fits, & le pier ſoit diſſeiſie, & le fits (vivant ſon pier) releſſa per ſon fait a le diſſeiſor, tout le droit que il ad, ou aver puiſſoit, en meſmes les tenements ſans clauſe de garrantie, &c. et puis le pier mourſt, &c. le fits poit loyalment entre ſur la poſſeſſion le diſſeiſor, pur ceo que il navoit droit en la terre en la vie ſon pier, mes le droit diſcendiſt a luy per diſcent apres le releas fait, q̄ le mort ſon pere, &c.

ALſo, theſe words which are commonly put in ſuch Releaſes, ſ. (*quæ quoviſmodo in futurum habere potero*) are as void in Law; for no right paſſeth by a Releaſe, but the right which the Releaſor hath at the time of the Releaſe made. For if there be Father and Son, and the Father be diſſeiſed, and the Son (living his Father) releaſeth by his deed to the diſſeiſor, all the right which he hath, or may have, in the ſame tenements, without clauſe of warranty, &c. and after the Father dieth, &c. the Sonne may lawfully enter upon the poſſeſſion of the Diſſeiſor, for that he had no right in the land in his fathers life, but the right deſcended to him after the Releaſe made, by the death of his Father, &c.

¶ NOte, a man may have a preſent right, though it cannot take effect in poſſeſſion, but in futuro.

As he that hath a right to a reverſion or Remainder, and ſuch a right he that hath it, may preſently releaſe: But here in the caſe which Littleton puts, where the Son releaſe in the life of his Father, this releaſe is void (a) becauſe he hath no right at all at the time of the Releaſe made; but all the right was at that time in the Father; after the deceaſe of the Father, the Son ſhall enter into the Land againſt his own Releaſe. (a) Britton, fol. 101. 17 E. 3. 67. 42 E. 3. 21. 10 H. 6. 4. 25. Aſſ. 7. 27 E. 3. execution 130.

The Baron makes a Leaſe for life and dieth, the Releaſe made by the Wife of her Dower to him in reverſion is good, albeit ſhe hath no cauſe of Action againſt him in præſenti. 16 E. 3. barre 245. Hoes caſe. 5. part f. 70, 71.

¶ *Sans clauſe de garrantie.* For if there be a warranty annexed to the releaſe, then the ſon ſhall be barred. For albeit the Releaſe cannot bar the right, for the cauſe aforeſaid, yet the warranty may rebutt, and bar him and his heirs of a future right, which was not in him at that time: and the reaſon (which in all caſes is to be ſought out) wherefore a warranty being a Covenant real ſhould bar a future right, is for avoiding of circuity of Action (which is not favoured in Law) as he that made the warranty ſhould recover the Land againſt the Tertenant, and he by force of the warranty to have as much in value againſt the ſame perſon: yet is there a diverſity between a warranty and a Feoffment. (b) for if there be Grandfather, Father and Son, and the Father diſſeiſeth the Grandfather, and make a Feoffment 20 H. 6. 29. (b) 39 H. 6. 43. 21 E. 4. 81. 15 E. tit. entr. cong. 21. 9 H. 7. 1. b. 2 E. 3. 38.

10. E.2. confirmation 24. 8. E. 2 gar 62. 11.H.4. 33. 43. E. 3. 7. 42. E.3. 24 Per Finchden. 17. E. 3. 67. Lib.1. fol.112,113.in Albanies caſe.

in fee the Grandfather dieth, the Father againſt his own feoffment ſhall not enter, but if he die, his ſon ſhall enter, and ſo note a diverſity betwæn a Releaſe, a Feoffment, and a Warranty: a Releaſe in that caſe is void, a feoffment is good againſt the feoffor, but not againſt his heir; a warranty is good both againſt himſelf and his heirs.

And here are three diverſityes worthy of obſervation, viz. Firſt, betwæn a Power or an Authority and a Right. Secondly, betwæn Powers and Authoritys themſelves. Thirdly, betwæn a Right and a poſſibility.

As to the firſt, if a Man by his laſt Will deviſeth that his Executors ſhall ſell his land, and dieth, if the Executors releaſe all their right and title in the land to the Heir, this is void, for that they have neither right nor title to the land, but onely a bare Authority, which is not within Littletons caſe of a releaſe of a right. And ſo it is if ceſtuy que uſe had deviſed that his feoffees ſhould have ſold the land: Albeit they had made a feoffment ober, yet might they ſell the uſe, for their Authority in that caſe is not given away by the Livery.

15.H. 7. 11.

As to the ſecond, there is a diverſity betwæn ſuch Powers and Authoritys as are onely to the uſe of a ſtranger and nothing for the benefit of him that made the releaſe (as in the caſe before) and a Power or Authority which reſpected the benefit of the releaſor, as in theſe uſuall powers of revocation, when the feoffor, &c. hath a power to alter, change, determine, or revoke the uſes (being intended for his benefit) he may releaſe; and where the eſtates before were defeaſible, he may by his releaſe make them abſolute, and ſeclude himſelf from any alteration or revocation, as it hath bæn reſolved; which diverſity you may read in (m) Albanies caſe.

(m) Lib. 1. Albanies caſe, ubi ſupra. Lib.5.Hoes caſe, 70,71. 10.H. 6. 4. 25. Aſſ. p.7.27. E.3.execution 150. paſch. 38. Eliz.Rot.521. inter Borough and Gray.

As to the third, before Judgment the Plaintiff in an Action of debt releaſeth to the bail in the Kings Bench all demands, and after Judgement is given, this ſhall not bar the Plaintiff to have Execution againſt the bail, becauſe at the time of the releaſe he had but a meer poſſibility, and neither Jus in re, nor Jus ad rem, but the duty is to commence after upon a contingent, and therefore could not be releaſed preſently. So if the Conuſee of a ſtature, &c. releaſe to the Conuſor all his right in the land, yet afterwards he may ſue Execution; for he hath no right in the land till Execution, but onely a poſſibility; and ſo have I known it adjudged.

Sect. 447.

49. E. 3. 28.

¶ *De tout le droit.* This muſt bæ intended of a bare right, and not of a Releaſe of Right; whereby any eſtate paſſeth, as to a Leſſee for years, &c. as ſhall be ſaid hereafter. Alſo it muſt be intended of a Releaſe of a right of freehold at the leaſt, and not to a right for any term for years or chattle real; as if Leſſee for years be ouſted, and he in the Reverſion Diſſeiſed, and the Diſſeiſor maketh a Leaſe for years, the firſt Leſſee may releaſe unto him. All which is implyed in the firſt, &c. Alſo in ſome caſe a releaſe of a right made to one that hath neither freehold in Deed, nor freehold in Law, is good and available in Law, (e) as the Demandant may Releaſe to the voucher, and yet the voucher hath nothing in the land; but the reaſon of that is, for that when the voucher entreth into the warranty, he becometh tenant to the Demandant, and may render the Land to him, in reſpect of the privity; but an eſtranger cannot releaſe to the voucher, becauſe In rei veritate, he is not tenant of the Land.

(m) 7. E.4 13. 20.H. 6. 29. 5. H.7. 41. 18 E. 3. 12. 8. H. 4. 5. 5. E. 3. 46. Vid. Sect. 490, 491.

¶ Item, en releases, de tout le droit que home ad a certein terres, &c. il covient a celuy a q̄ le Releas eſt fait en aſcun cas, que il ad l'franktenemẽt en les terres en fait, ou en ley, al temps de releas fait, &c. car en cheſcun cas lou celuy a que l'releas eſt fait ad franktenemẽt en fait, ou franktenement en ley, al temps del releas, &c. donque le releas eſt bone.

Alſo, in Releaſes of all the Right which a man hath in certain Lands, &c. it behoveth him to whom the Releaſe is made, in any caſe, that he hath the Freehold in the Lands, in Deed, or in Law at the time of the Releaſe made &c. for in every caſe where he to whom the Releaſe is made hath the Freehold in Deed, or in Law, at the time of the Releaſe, &c. there the Releaſe is good.

And

(d) And ſo it is if the Tenant alien, hanging the Præcipe, the releaſe of the Demandant to the Tenant to the Præcipe is good, and yet he hath nothing in the land. (d) 10 E.4. 14. 12 Aſſ. p. 41.

In time of vacation an Annuity, that the Parſon ought to pay, may be releaſed to the Patron in reſpect of the priority; but a releaſe to the Ordinary only ſaveth not good, becauſe the Annuity is temporal. 8 E.3.21. 46 E.3.6.b. 8 H.6.23. 21 H.7.41.

If a Diſſeiſor make a Leaſe for life, the Diſſeiſee may releaſe to him, for to ſuch a Releaſe of a bare right there needs no priority, as ſhall be ſaid hereafter. But if the Diſſeiſor make a Leaſe for years, the Diſſeiſee cannot releaſe to him, becauſe he hath no eſtate of Freehold. And yet in ſome caſe a right of Freehold ſhall drown in a Chattel, as if a Feme hath a right of Dower, ſhe may releaſe to the Gardian in Chivalry, and her right of Freehold ſhall drown in the Chattel, becauſe the writ of Dower doth lie againſt him, and the heir ſhall take advantage of it. And it is to be obſerved, that by the ancient Maxime of the Common Law, a right of Entry, or a Thoſe in action cannot be granted or transferred to a ſtranger; and thereby is avoided great oppreſſion, injury and injuſtice; Nul charter, nul vende, ne nul done vaut perpetualment ſi le donor neſt ſeiſie al temps de contracts de 2. droits, s c. del droit de poſſeſſion, & del droit del propertie. Mirror, cap.2. Sect.13. And therefore well ſaith Littleton, that he to whom a releaſe of a right is made, muſt have a Freehold.

For the better underſtanding of transferring of naked rights to lands or tenements, either by Releaſe, Feoffment or otherwiſe, it is to be known, that there is Jus proprietatis, a right of owner ſhip; Jus poſſeſſionis, a right of ſeiſin or poſſeſſion; and Jus proprietatis, & poſſeſſionis, a right both of right and poſſeſſion: and this is anciently called Jus duplicatum, or Droit droit. For example, if a man be diſſeiſed of an Acre of Land, the Diſſeiſee hath Jus proprietatis, the Diſſeiſor hath Jus poſſeſſionis; and if the Diſſeiſee releaſe to the Diſſeiſor, he hath Jus proprietatis & poſſeſſionis. Mirror, ubi ſupra. Bracton, lib.2. fol.32. Britton, fol.89,121. Bracton, lib.5. fol.372. And regularly it holdeth true, that when a naked right to land is releaſed to one that hath Jus poſſeſſionis, and another by a mean title recover the land from him, the right of poſſeſſion ſhall draw the naked right with it, and ſhall not leave a a right to him to whom the Releaſe is made. For example, if the heir of the Diſſeiſor being in by deſcent, A. doth diſſeiſe him, the Diſſeiſee releaſe to A. now hath A. the mere right to the land. But if the heir of the Diſſeiſor enter into the land, and regain the poſſeſſion, that ſhall draw with it the mere right to the land, and ſhall not regain the poſſeſſion only, and leave the mere right in A. but by the continuance of the poſſeſſion, the mere right is therewith veſted in the heir of the Diſſeiſor.

But if the Donee in Tail diſcontinue in Fee, now is the reverſion of the Donor turned to a naked right, if the Donor releaſe to the Diſcontinuee and die, and the iſſue in Tail doth recover the land againſt the Diſcontinuee, he ſhall leave the reverſion in the Diſcontinuee, for the iſſue in Tail can recover but the Eſtate tail only, and by conſequence muſt leave the reverſion in the Diſcontinuee, for the Donor cannot have it againſt his Releaſe: but if the Diſſeiſee enter upon the heir of the Diſſeiſor, and infeoffe A. in Fee, and the heir of the Diſſeiſor recover the whole eſtate, that ſhall draw with it the mere right, and leave nothing in the Feoffee. Nota the diverſity. Another diverſity is obſervable, when the naked right is precedent before the acquiſition of the defeaſible eſtate; for there the recontinuance of the defeaſible eſtate ſhall not draw with it the preceding right. (e) As if the Diſſeiſee diſſeiſe the heir of the Diſſeiſor, albeit the heir recover the land againſt the Diſſeiſee, yet ſhall he leave the precedent right in the Diſſeiſee. So if a woman that hath right of Dower diſſeiſe the heir, and he recover the land againſt her, yet ſhall he leave the right of Dower in her. (e) 5 Aſſ.1. 10 Aſſ.18. 50 E.3.7.4 E.3. Eſtop.133. 30 Aſſ.5. 11 E.3. Entry 56. 12 Aſſ.41. 27 E.3.84,488.

Another diverſity is to be noted, when the mere right is ſubſequent, and transferred by act in Law, there albeit the poſſeſſion be continued, yet that ſhall not draw the naked right with it, but ſhall leave it with him; as if the heir of the Diſſeiſor be diſſeiſed, and the Diſſeiſor infeoffe the heir apparent of the Diſſeiſee being of full age, and then the Diſſeiſee dieth, and the naked right deſcend to him, and the heir of the Diſſeiſor recover the land againſt him, yet doth he leave the naked right in the heir of the Diſſeiſee. So if the Diſcontinuee of Tenant in tail infeoffe the iſſue in tail of full age, and Tenant in tail dye, and then the Diſcontinuee recover the land againſt him yet he leaveth the naked right in the iſſue. (e) But if the heir of the Diſſeiſor be diſſeiſed, and the Diſſeiſee releaſe to the Diſſeiſor upon condition, if the condition be broken, it ſhall reveſt the naked right. And ſo if the Diſſeiſee had entred upon the heir of the Diſſeiſor, and made a feoffment in fee, upon condition, if he entred for the condition broken, and the heir of the Diſſeiſor entred upon him, the naked right ſhould be left in the Diſſeiſee. But if the heir of the Diſſeiſor had entred before the condition broken, then the right of the Diſſeiſee had been gone for ever. But now let us hear what Littleton ſaith. 23 H.8. tit. Reſtore al action Br. 5. 30 E.3. 7. Vid. Sect.473. 475, 478, 487. (e) 38 E.3.16, 9 H.7.24.

Sect. 448.

¶ HEre Littleton deſcribeth what a Freehold in Law is, for he had ſpoken before in many places of Freholds in Deed. This Bracton calleth (a) Civilem & naturalem poſſeſſionem ſeu ſeiſinam. The natural ſeiſin is the freehold in Deed, and the Civil the Freehold in Law.

(a) Bract. l. 4. fo. 206, 236. Britton, fol. 83. b. Fleta lib. 3. cap. 15. Vide Sect. 680.

If a man levy a Fine to a man. Sur conuſance de droit come ceo que il ad de ſon Done, or a Fine Sur conuſance de droit tantum: Theſe be Feoffments of Record, and the Conuſee hath a Freehold in Law in him before he entreth.

42 E. 3. 20. 10 H. 6. 14. 17 E. 3. 78. 2 E. 3. 33.

Upon an exchange the parties have neither freehold nor in Deed nor in Law before they enter; ſo upon a partition the Freehold is not removed until an entry.

11 H. 4. 61. 21 H. 7. 12.

(g) If Tenant for life by the agreement of him in the Reverſion ſurrender unto him; he in the reverſion hath a Freehold in Law in him before he enter. (h) Upon a livery within the view no Freehold is veſted before an entry.

(a) 32 E. 3. barre 262. 41 Aſſ. 2. 13 H. 4. Surrender 10.
(h) 38 E. 3. 12.
17 E. 3 77. 18 E. 4. 25.

¶ FRanktenement en ley eſt, ſi come un home diſſeiſi un auter, et moruſt ſeiſie, per q̄ les tenements diſcendont a ſon fits, coment q̄ ſon fits ne entra pas en les tenements, uncore il ad un franktēnt en ley, quel per force de diſcent eſt jeat ſur luy, & pur ceo un releas fait a luy, iſſint eſteant ſeiſie de franktenement en ley, eſt aſſets bone, & ſil prent feme iſſint eſteant ſeiſie en ley, coment que il ne unque enter pas en fait, & moruſt, ſon feme ſerra endow.

FReehold in Law is as if a man diſſeiſeth another and dieth ſeiſed, whereby the tenements deſcend to his ſon, albeit that his ſonne doth not enter into the tenements, yet he hath a freehold in Law, which by force of the deſcent is caſt upon him, and therefore a Releaſe made to him ſo being ſeiſed of a freehold in Law is good enough; and if he taketh wife being ſo ſeiſed in Law, although he never enter in Deed, and dieth, his wife ſhall be endowed.

If a man doth bargain and ſell land by Deed indented and inrolled, the Freehold in Law doth paſs preſently. And ſo when uſes are raiſed by Covenant upon good conſideration.

If a Tenant in a Præcipe being ſeiſed of lands in fee, confeſs himſelf to be a Villain to an eſtranger, and to hold the land in Villenage of him; the eſtranger by this acknowledgment is actually ſeiſed of the Freehold and inheritance without any entry. But let us return to Littleton.

Sect. 449.

¶ ITem, en aſcuns cales de releales de tout le droit, coment que celuy a que le releale eſt fait nad riens en le franktenement en fait, ne en ley, uncore le releale eſt aſſets bone. Sicom̄ le diſſeiſor leſſa la terre que il ad per diſſeiſin a un auter pur terme de ſa vie, ſavant le reverſion a luy, ſi le diſſeiſee ou ſon heire releſſa al diſſeiſor tout le droit, &c.

ALſo in ſome caſes of releaſes of all the right, albeit that he to whom the releaſe is made hath nothing in the Freehold in Deed nor in Law, yet the releaſe is good enough. As if the Diſſeiſor letteth the land which he hath by diſſeiſin to another for term of his life, ſaving the reverſion to him, if the Diſſeiſee or his heir releaſe to the Diſſeiſor all the right, &c. this

cel

tel releaſe eſt bone, pur ceo que celuy a que le releaſe eſt fait avoit en luy un reverſion al temps del releaſe fait.

releaſe is good, becauſe he to whom the releaſe is made had in law a reverſion at the time of the releaſe made.

¶ HEre Littleton addeth a limitation to the next precedent Section, viz. that a Releaſe of all the right may be good to him in reverſion, albeit he hath nothing in the Freehold, becauſe he hath an eſtate in him. 6 E.4.13. 14 H.4.32. b. 31.E.3.17. 49 E.3.28. caſe alt.

¶ *Tout le droit, &c.* Or Title, Intereſt, Demand, or the like; and ſo it is, if he in reverſion hath an eſtate for life or in tail in reverſion; and in the like caſe it appeareth in the next Section.

Sect. 450.

¶ EN meſme le maner eſt, lou leas eſt fait a un home pur terme de vie, le remainder a un auter pur terme de auter vie, le remainder a le tierce en le taile, le remainder a le quart en fee, ſi un ſtranger que droit ad a la terre, releſſa tout ſon droit a aſcun de eux en le remainder, tiel releaſe eſt bone, pur ceo que cheſcun de eux ad un remainder en fait veſtue en luy.

IN the ſame manner it is, where a Leaſe is made to a man for term of life, the remainder to another for term of another mans life; the remainder to the third in taile; the remainder to the fourth in fee; if a ſtranger which hath right to the Land releaſeth all his right to any of them in the remainder, ſuch releaſe is good, becauſe every of them hath a remainder in Deed veſted in him.

¶ HEre is another limitation, that a Releaſe is good to him in the remainder, albeit he hath nothing in the Freehold in poſſeſſion, becauſe he hath an eſtate in him, as hath been ſaid. In both theſe limitations it is to be obſerved, that the ſtate which maketh a man Tenant to the Præcipe, is ſaid to be the Freehold, as here the ſtate of Tenant for life, and not the reverſion in fee. 7 E.4.13. 41 E.3.17. 7 E.3.54. 18 E.2. Tit. Entry 74. 3 E.2. Tit. Entry 7. F.N.B. 207. E.

Sect. 451.

¶ MEs ſi le tenant a terme de vie ſoit diſſeiſie, & puis celuy que ad droit (eſteant le poſſeſſion en le Diſſeiſor) releſſa a un de eux a que le remainder fuit fait tout ſon droit, tel releaſe eſt void pur ceo que il navoit un remainder en fait al temps de releaſe fait, forſque tantſolement un droit del remainder.

BUt if the Tenant for term of life be diſſeiſed, and afterwards he that hath right (the poſſeſſion being in the Diſſeiſor) releaſeth to one of them to whom the remainder was made, all his right, this releaſe is void, becauſe he had not a remainder in Deed at the time of the Releaſe made, but onely a right of a remainder.

¶ *Forſque tantſolement un droit del remainder.* For a Releaſe of a right to one that hath but a bare right regularly is void; for as Littleton hath before ſaid, he to whom a releaſe is made of a bare right in Lands and Tenements muſt have either a Freehold in Deed or in Law in poſſeſſion, or a ſtate in remainder, or reverſion in fee or fee tail, or for life. Vide Sect. 454.

Sect. 452.

¶ By this it appeareth, that as a releaſe made of a right to him in reverſion or Remainder ſhall aid and benefit him that hath the particular Eſtate for years, life, or eſtate tail; ſo a Releaſe of right made to a particular tenant for life, or in tail, ſhall aid and benefit him or them in the remainder.

If two Tenants in Common of Land grant a Rent charge of 40. s. out of the ſame, to one in Fee, and the Grantee releaſe to one of them; this ſhall extinguiſh but twenty ſhillings, for that the Grant in Judgment of Law was ſeverall. So it is if two men be ſeiſed of ſeverall Acres, and grant a Rent, ut ſupra. But there is a diverſity between ſeverall Eſtates in ſeverall lands, and ſeverall eſtates in one land; for if one be tenant for life of lands, the reverſion in Fee over to another, if they two joyn in a grant of a Rent out of the Lands, if the Grantee releaſeth either to him in the reverſion, or to Tenant for life, the whole Rent is extinguiſhed, for it is but one Rent, and iſſueth out of both eſtates; and ſo note the diverſity.

¶ *Si le Tenant ad le fait en ſon poigne a pleader.* And ſo it is in both caſes; for albeit he in the Reverſion or remainder is a ſtranger to the Deed when the Releaſe is made to the Tenant, and the Tenant for life or in tail is a ſtranger to the Deed, when the Releaſe is made to him in reverſion or remainder; yet ſeeing they are pryvies in eſtate, none of them in pleading ſhall take benefit thereof, without ſhewing the ſame in Court, which is worthy to be obſerved.

¶ *Sils ceo poient monſtre*, The one cannot plead the Releaſe made to the other, without ſhewing of it, for that they are pryvy in Eſtate, as hath been ſaid. The reſidue of theſe two Sections needs no explication.

¶ ET nota, Que cheſcun Releaſe fait a celuy que ad un Reverſion ou un Remainder en Fait, ſervera & aidera celuy que ad le Franktenement, auxy bien come a celuy a que le Releaſe fuit fait, ſi le Tenant avoit le Releaſe en ſon poign de pleader.

AND note, that every Releaſe made to him which hath a reverſion or a Remainder in Deed, ſhall ſerve and aide him who hath the Freehold, as well as him to whom the releaſe was made, if the Tenant hath the Releaſe in his hand to plead.

Sect. 453.

¶ ET en meſme le maner eſt lou un Releaſe eſt fait al Tenant pur Term de vie, ou al Tenant en le Taile, ceo urera a eux en le reverſion, ou a eux en le Remainder, auxy bien come al Tenant de Franktenement, & averont auxy grand advantage de cel, ſils ceo poyent monſtre.

IN the ſame manner it is, where a Releaſe is made to the tenant for life, or to the Tenant in Tail, this ſhall enure to them in the reverſion, or to them in the remainder, as well as to the tenant of the Freehold; and they ſhall have as great advantage of this, if they can ſhew it.

35 H.6.8.

Sect 454.

¶ Item, ſi ſoit Seignior & Tenant, & le Tenant ſoit diſſeiſie, & le ſeignior releſſa al Diſſeiſée tout le droit que il avoit en le ſeigniory, ou en le terre, cel releaſe eſt bone, & le Seigniory eſt extinct, & ceo eſt pur cauſe del privity, que eſt perenter le Seignior, & le diſſeiſée: car ſi les avers le diſſeiſée ſoient pris, & de eux le Diſſeiſée ſuiſt un Replevin envers le Seignior, il compellera le Seign̄ davowrer ſur luy, car ſil avower ſur l' Diſſeiſor, donques ſur le matter monſtre, lavowry abatera; car le diſſeiſée eſt Tenant a luy en droit & en la Ley.

ALſo if there be Lord and tenant, and the tenant be diſſeiſed, and the Lord releaſeth to the diſſeiſee all the right which he hath in the Seigniory or in the Land, this Releaſe is good, & the Seigniory is extinct: And this is by reaſon of the privity which is between the Lord and the diſſeiſee: for if the Beaſts of the diſſeiſee be taken, and of them the diſſeiſee ſueth a Replevin againſt the lord, he ſhal compel the lord to avow upon him; for if he avow upon the diſſeiſor, then upon the matter ſhewen, the Avowry ſhall abate; for the diſſeiſee is Tenant to him in right and in Law.

¶ HEreupon may be collected & obſerved two diverſities: Firſt, Between a Seigniory or Rent ſervice, and a Rent Charge: for a Seigniory or Rent ſervice may be releaſed and extinguiſhed to him that hath but a bare right in the Land. And the reaſon hereof is in reſpect of the privity betwæn the Lord and the Tenant in right, for he is not onely as Tenant to the Advowry; but if he die, his heir within age, he ſhall be in ward; and if of full age, he ſhall pay relief; and if he die without Heir, the land ſhall eſcheat. But there is no ſuch privity in caſe of a Rent charge, for there the charge onely lieth upon the land.

The ſecond diverſity is betwæn a Seigniory and a bare right to land: for a Releaſe of a bare right to land, to one that hath but a bare right, is void, as hath bæn ſaid. But here in the caſe of out Author, a releaſe of a Seigniory to him that hath but a right, is good to extinguiſh the Seigniory. Vide Sect.451.

Nota, a Seigniory, Rent, or right, either in præſenti, or in futuro, may be releaſed five manner of ways, and the firſt three without any privity. Firſt, to the Tenant of the Freehold in Deed or in Law. Secondly, To him in remainder. Thirdly, To him in the reverſion. 1 Fo.10. fol.48. Lampets caſe.

The other two in reſpect of Privity; as firſt, where the Lord releaſeth his Seigniory to the Tenant being diſſeiſed, having but a right, and no eſtate at all. Secondly, in reſpect of the privity, without any eſtate, or right, as by the Demandant to the Voucher, or Donor to the Donee, after the Donee hath diſcontinued in fee, as appeareth hereafter in this Chapter. Sect.455.

¶ *Per cauſe de privitie, &c.* See for this word (Privity) Sect.461.

¶ *Il compellera le Seignior davowrer ſur luy, &c.* This is regularly true; but if the Lord hath accepted ſervices of the Diſſeiſor, then the Diſſeiſee cannot enforce the Lord to avow upon him, though his Beaſts be taken, &c. 20 H.6.9. b. 21 E.3.26. 48 E.3.9. 2 E.4.6. a.

If a man hath title to have a Writ of Eſcheat, if he accept homage or fealty of the tenant, he is barred of his Writ of Eſcheat: but if he accept Rent of the tenant, that is no bar to him, for it may be received by the hands of a Bayliffe. d) But ſome do hold, that if there be Lord and tenant, and the tenant be diſſeiſed, and the Diſſeiſee die without heir, the Lord accepts Rent by the hand of the diſſeiſor, this is no bar to him. Contrary it is, if he avow for the Rent in Court of Record, or if he take a corporal ſervice, as Homage or Fealty; for the diſſeiſor is in by wrong: but if the Lord accept the Rent by the hands of the heir of the diſſeiſor, or of his Feoffee, becauſe they be in by title, this ſhall bar him of his Eſcheat, which is to be 31 E.1. Deſcent 17. 26 E.3.72. 4 H.6.21. F.N.B. 144. o. (d) 7 E.6. tit. Eſcheat Br. 18.

be underſtood of a diſcent or Feoffment, after the title of Eſcheat accrued; (e) for if the diſſeiſor make a feoffment in Fee, or die ſeiſed, and after the Diſſeiſee die without heir, then there is no Eſchear at all, becauſe the Lord hath a Tenant in by Title. And when Littleton wrote, the diſſeiſee in the caſe here put, ſhould have compelled the Lord to have avowed upon him, as Littleton holdeth. But now this is altered by a latter Statute of (f) 21 H. 8. for whereas by Fines, recoveries, Grants, and ſecret Feoffments, &c. made by Tenants to perſons unknown, the Lords were put from knowledge of their Tenants, upon whom by order of Law they ſhould make their avowry, &c. It is by that Statute enacted, that if the Lord ſhall diſtrain upon the lands and Tenements holden, &c. that he may avow, &c. upon the ſame lands, &c. as in lands, &c. within his Fee or Seigniory, &c. without naming of any perſon certain, and without making avowry upon a perſon certain. Upon which Statute theſe four points are to be obſerved: Firſt, that the Lord hath ſtill election either to avow according to the Common Law, by force of the Statute, by reaſon of this word (May) Secondly, Albeit the purview of the Act be general, yet all neceſſary incidents are to be ſupplied, and the ſcope and end of the Act to be taken: and therefore though he need not to make his avowry upon any perſon certain, yet he muſt alledge Seiſin by the hands of ſome Tenant in certain, within forty years. Thirdly, that if the avowry be made according to the Statute, every Plaintiff in the repledin, or ſecond deliverance, be he Termor or other, may have every anſwer to the Avowry that is ſufficient, and alſo have aid, and every other advantage in Law, (diſclaimer onely except) for diſclaim he cannot, becauſe in that caſe the avowry is made upon no certain perſon. Fourthly, where the words of the Statute be, If the Lord diſtrain upon the Lands and Tenements holden, yet if the Lord come to diſtrain, and the Tenant enchaſe his Beaſts which were within the view out of the land holden, and there the Lord diſtrain, albeit the diſtreſs be taken out of his fee and Seigniory, in that caſe: yet is it within the ſaid Statute; for in judgment of Law the diſtreſſe is lawful, and as taken within his Fee and Seigniory; and this Statute being made to ſuppreſſe Fraud, is to be taken by Equity.

(e) 7 H. 17. 3 R. 2. Entr. cong. 38. 2 H. 4. 8. 6 H. 7. 9. Vide Sect. 556.

(f) 21 H. 8. cap. 19.

Lib. 9. fol. 136. Aſcoughs caſe. 27 H. 8. fol. 4. 32 H. 8. cap. 2. Lib. 9. fol. 56. Bucknals caſe.

34 H. 8. Avowry Br. 113. 27 H. 8. 4. & 20. Bucknals caſe, ubi ſupra.

Lib. 9. f. 22. in caſe Davowry. 44 E. 3. 20. 11 H. 7. 4. 21 H. 7. 40. 34 H. 6. 18. 16 E. 4. 10. 6 R. 2. Reſcous. 11.

Sect. 455.

¶ ITem, ſi terre ſoit done a un home en Taile, reſervant al Donor & a ſes heires un certain Rent, ſi le Donée ſoit diſſeiſie, & puis le Donor releſſa al Donée & a ſes heires tout le droit que il avoit en la terre, & puis le Donée enter en la terre ſur le Diſſeiſor, en ceſt caſe le Rent eſt ale, pur ceo que le Diſſeiſée al temps de releaſe fait, fuit tenant en droit, & en le Ley al Donor, & avowry a fine force covient de eſtre Fait ſur luy per le Donor pur le rent aderere, &c. Mes uncore rien de droit de terres, S. de le droit, de le reverſion paſſera per tiel Releaſe, pur ceo que le Donée a que le Releaſe eſt fait, adonque navoit riens en la terre forſque tantſolement un droit, & iſſint le droit del terre ne puiſſoit adonques paſſer al Donée per tiel Releaſe.

ALſo if land be given to a man in Tail, reſerving to the Donor and to his Heirs a certain rent, if the Donee be diſſeiſed, and after the Donor releaſe to the Donee and his Heirs all the right which he hath in the land, and after the Donee enter into the land upon the Diſſeiſor, in this caſe the rent is gone, for that the Diſſeiſee at the time of the Releaſe made, was Tenant in right, and in law, to the Donor; and the Avowry of Fine force ought to be made upon him by the Donor for the rent behind, &c. but yet nothing of the right of the lands, (*viz.*) of the reverſion, ſhall paſſe by ſuch releaſe, for that the Donee to whom the Releaſe is made, then had nothing in the land, but onely a right, and ſo the right of the Land could not then paſſe to the Donee by ſuch Releaſe.

¶ *Si*

SI le donee ſoit diſſeiſie, &c. This is evident by that which hath been ſaid. But admit that the Donee maketh a Feoffment in fee, and the Donor releaſe unto him, and his Heirs, all the right in the land, this ſhall extinguiſh the rent, becauſe the Lord muſt avow upon him; and yet the Tenant in tail after the feoffment hath no right in the land. But the reaſon is in reſpect of the privity, and that the (m) Donor is by neceſſity compellable to avow upon him only; for if he ſhould avow upon the diſcontinuee, then it ſhould appear of his own ſhewing, that the reverſion whereunto the rent is incident ſhould be out of him, and conſequently the Avowry ſhould abate; and ſo was it (a) reſolved Trin. 18 Eliz. in the Court of Common Pleas, in Sir Thomas Wiats caſe, which I heard and obſerved. And Littleton ſaith here, that in caſe of the Diſſeiſin of fine force, the Avowry muſt be made upon the Donee.

Vide Sect. 454. 1 H. 5. tit. Grant 43. 14 H. 4. 38. lib. 3. fol. 29. lib. 6. 58. Lampets caſe, ubi ſupra.

(m) 10 E. 3. 26. 48 E. 3. 8 b. 31 E. 2. gard. 116. 5 E. 4. 7 E. 4. 27 15 E. 4. 13.

(n) Trin. 18 Eliz. Sir Thomas Wiats Caſe in Communi Banco.

¶ *Uncoreriens de droit, &c. de reverſion, &c.* Here the diverſity aforeſaid betwen the rent ſervice, and a bare right to the land, appeareth.

Sect. 456.

¶ EN meſme le manner eſt, ſi leas ſoit a un pur terme de vie, reſervant al leſſor & a ſes heires certeine rent, ſi le leſſee ſoit diſſeiſie, & puis leſſor releſſa al leſſee, & a ſes heires, tout le droit que il ad en la terre, & apres le leſſee enter, coment que en teſt cas le rent eſt extinct, uncore rien del droit de la reverſion paſſera, Cauſa qua ſupra.

IN the ſame manner it is, if a leaſe be made to one for term of life, reſerving to the Leſſor and to his heirs a certain rent, if the Leſſee be diſſeiſed, and after the Leſſor releaſe to the Leſſee and to his Heirs all the right which he hath in the land, and after the leſſee entreth, albeit in this caſe the rent is extinct, yet nothing of the right of the reverſion ſhall paſſe, *Cauſa qua ſupra.*

¶ HEreby the diverſity is made apparent betwen a releaſe of a Rent Service out of land, and a releaſe of right to land, in this Section.

Sect. 410.

¶ MEs ſi ſoit veray Seignior et veray tenant, et le tenant fait un feoffment en fee, le quel feoffee ne unque devient tenant al Seignior, ſi l'Seignior releſſa al feoffor tout ſon droit, &c. teſt releas eſt en tout void, pur ceo q̄ le feoffor ad nul droit en la terre, et il neſt Tenant en droit al

BUT if there be very lord and very tenant, and the tenant maketh a feoffment in fee, the which Feoffee doth never become tenant to the Lord, if the Lord releaſe to the Feoffor all his right, &c. this releaſe is altogether void, becauſe the Feoffor hath no right in the land, and he is not Tenant in right to the

¶ *Veray Seignior & veray tenant.* This is to be underſtood of a Lord in fee ſimple, and of a Tenant of like eſtate.

There be four manner of Avowries for Rents and Services, &c. viz. 1. Super verum tenentem, as in the caſe here put. 2. Super verum tenentem in forma prædicta, as where a leaſe for life, or a gift in tail be made, the remainder in fee. 3. Upon one as upon his tenant by the Manor, omitting (very) & this is when the Lord hath a particular eſtate in the Seignory, and ſo ſhall the Donor upon

Vide Aſcoughs Caſe, lib. 9. fol. 135, 136. 20 H. 6. 9. 2 H. 4. 24. 12 E. 4. 2. 26 H. 6. Avowry 17. 9 Eliz. Dyer 257. 5 H. 7. 11. 7 E. 4. 24. 20 E. 3. Avowry 231.

upon the Donee, or Leſſor upon the Leſſee. 4. Sur le matter en la terre, as within his Fee and Seigniory. As where the Tenant by Knights Service maketh a leaſe for life reſerving a rent, and die, his heir within age, the Gardian ſhall avow upon the Leſſee, viz. Super materiam prædictam in terris & tenementis prædictis ut infra feodum & Dominum ſuum. Now by the Statute the very Lord may avow, as in lands within his Fee and Seigniory, without avowing upon any perſon in certain.

47 E.3. fol. ultimo. 38 H. 6. 23.

Seignior, mes tant ſolement tenant quant al avowrie faire, & il ne unques compellera le Seignior davower ſur luy, car le Seignior avowera ſur le Feoffee ſil voile.

Lord, but onely tetant as to make the Avowry, and he ſhall never compel the Lord to avow upon him; for the Lord ſhall avow upon the Feoffee if he will.

Here appeareth the diverſity between a Tenant in tail, and a Tenant in Fee ſimple; for albeit Tenant in tail make a feoffment in fee, yet the right of the Entail remains, and ſhall deſcend to the iſſue in tail. But when the Tenant in Fee ſimple makes a Feoffment in fee, no right at all remains of his eſtate, but the whole is transferred to the Feoffee.

21 H.8. cap.19.

Alſo the Lord is not compellable in that caſe to avow upon the Feoffor, but if he will, as Littleton here ſaith, he may avow on the Feoffee; but ſo it is not, as hath been ſaid, in caſe of Tenant in tail.

Note a diverſity between actions and Acts which concern the right, and actions and Acts which concern the poſſeſſion only. For a Writ of Cuſtomes and Services lieth not againſt the Feoffor, nor a leaſe to him ſhall extinguiſh the Seigniory. So if a Reſcous be made, an Aſſiſe ſhall not lie againſt the Feoffor, and him that made the Reſcous, becauſe the Feoffee is Tenant, and in Aſſiſe, the ſurpluſage incroached ſhall be avoided. For theſe actions and acts concern the right; but of a Deiſin and an Avowry which concern the poſſeſſion, it is otherwiſe. And if the Lord releaſe to the Feoffor, this is good between them, as to the poſſeſſion and diſcharge of the Arrerages, but the Feoffee ſhall not take benefit of it, for that, as hath been ſaid, it extendeth not to the right. But the Feoffor ſhall pleada releaſe to the Feoffee for thereby the Seigniory is extinct: as if Leſſee for life doth waſt, and grant over his eſtate, and the Leſſor releaſe to the Grantee, in an action of Waſt againſt the Leſſee, he ſhall plead the releaſe, and yet he hath nothing in the Land. And ſo in Waſt ſhall Tenant in Dower or by the Courteſie in the like caſe, and the Mouchee, and the Tenant in a Præcipe after a feoffment made. And ſo in a Contra formam collationis.

¶ *Le feoffee ne unques deveigne tenant.* Nota, here an excellent point of Learning, viz. if there be Lord and Tenant, and the Rent is behind by diders years, and the Tenant make a feoffment in fee, if the Lord accept the ſervice or Rent of the Feoffee due in his time, he ſhall loſe the Arrerages due in time of the Feoffor; for after ſuch acceptance he ſhall not avow upon the Feoffor nor upon the Feoffee, for the Arrerages incurred in the time of the Feoffor. But in that caſe, if the Feoffor dieth, albeit the Lord accept the Rent or ſervice by the hand of the Feoffee due in his time, he ſhall not loſe the Arrerages, for now the Law compelleth him to avow upon the Feoffee, and that which the Law compelleth him unto, ſhall not prejudice him.

4 E.3.22. 7 E.3.8. 7 E 4.27. 29 H.8. tit. avowry. Br. 111. Lib. fol. 65. 66. Pennants Caſe 7 H.4.14. 2 E.4.6. 34 H.6.46. 37 H.6. 29 H.8. Avowry.

So it is, and for the ſame reaſon if there be Lord, Meſne and Tenant, and the rent due by the Meſne is behind, and after the Tenant for-judge the Meſne, and the Lord receive the Services of the Meſne which iſſue out of the Tenancy, he ſhall not be barred of the Arrerages which iſſued out of the Meſnalty; and ſo if the rent be behind, and the Tenant dieth, the acceptance of the Services by the hand of the heir ſhall not barre him of the Arrerages, for in theſe caſes albeit the perſons be altered, yet the Lord doth accept the Services of him which only ought to do them.

But as long as the Feoffor liveth, the Lord ſhall not be compelled to avow upon the Feoffee unleſs he giveth the Lord notice, and tender unto him all the Arrerages.

But now by the Statute the Lord may avow upon the lands ſo holden, as in lands within his Fee of Seigniory without naming of any perſon certain, as hath been ſaid, which hath much altered the Common Law in the caſes abovеſaid, for the benefit and ſafety of the Lord.

4 E.3.22. 47 E.3.4.

21 H.8. cap.19.

But yet theſe caſes are neceſſary to be known (for which purpoſe I have added them) for that the Lord may avow ſtill at the Common Law if he will.

Sect.

Sect. 458.

¶ AUterment eſt lou le veray tenant eſt diſſeiſie, come en le cas avandit, car ſi le veray tenant que eſt diſſeiſie teigne del Seignior, per ſervice de chivaler, e morust (ſon heir eſteant deins age) le Seignior avera e ſeiſera l' garde del heire, e iſſint navera. il my le gard del feoffor que fiſt le feoffment en fee, iſſint il eſt graund diverſity enter les deux cales, &c.

OTherwiſe it is where the very Tenant is diſſeiſed, as in the caſe aforeſaid; for if the very tenant who is diſſeiſed, hold of the Lord by Knights Service, and dieth, (his heir being within age) the Lord ſhall have and ſeize the Wardſhip of the heir, and ſo ſhall he not have the ward of the feoffor that made the feoffment in fee, *&c.* So there is a great diverſity between theſe two caſes.

Of this ſufficient hath been ſaid before.

12 H. 4. 13. 36 E. 3. tit. gard. 10. 6 H. 7. 9. 37 H. 6. 1. 32 H. 6. 27. 7 E. 6. tit. gard. Br.

Sect. 459.

¶ ITem, ſi un home leſſa a un auter ſon terre pur terme dans, ſi le leſſor releſſa al leſſee tout ſon droit, &c. devant que le leſſee avoit enter en meſme le terre per force de meſme l' leaſ. tiel releas eſt void, pur ceo que le leſſee navoit poſſ. en la terre al temps del releas fait, mes tantſolement un droit daver meſme la terre per force de meſme le leas. Mes ſi le leſſee enter en meſme la terre, e ent eit poſſ. per force de meſme le leas, donque tiel releas fait a luy per le feoffor, ou per ſon heire, eſt ſufficient a luy per cauſe del privitie, que per force per leas eſt perenter eux, &c.

ALſo, if a man letteth to another his land for terme of years, if the leſſor releaſe to the Leſſee all his right, *&c.* before that the Leſſee had entred into the ſame land by force of the ſame leaſe, ſuch releaſe is void, for that the leſſee had not poſſeſſion in the land at the time of the Releaſe made, but only a right to have the ſame land by force of the leaſe. But if the leſſee enter into the land, and hath poſſeſſion of it by force of the ſaid leaſe, then ſuch releaſe made to him by the feoffor, or by his heir, is ſufficient to him, by reaſon of the privity which by force of the leaſe is between them, *&c.*

¶ *DEvant que le leſſee avoit enter*, &c. For before entry the leſſee hath but intereſſe termini, an intereſt of a term, and no poſſeſſion, and therefore a releaſe, which enures by way of enlarging of an eſtate, cannot work without a poſſeſſion, for before poſſeſſion there is no reverſion; and yet if a Tenant for 20 years in poſſeſſion make a leaſe to B. for five years, and B. enter, a releaſe to the firſt leſſee is good, for he had an actual poſſeſſion, and the poſſeſſion of the Leſſee is his poſſeſſion. And ſo it is if a man make a Leaſe for years, the remainder for years, and the firſt leſſee doth enter, a releaſe to him in the remainder for years is good, to enlarge his eſtate.

49 E. 3. 28. 32 H. 6. 8. 37 H. 6. 18. 22 E. 4. 37. 4 H. 7. 10. 15 H. 7. 14.

22 E. 4. Suttender 8.

But if a man make a leaſe for years, to begin preſently, reſerving a rent, if before the leſſee doth enter, the leſſor releaſeth all the right that he hath in the Land, albeit this releaſe cannot enlarge his Eſtate, yet it ſhall in reſpect of the privity extinguiſh the rent. And ſo it is if a releaſe be made to begin at Michaelmas, reſerving a rent, and before the day the leſſor releaſe all the right that he hath in the Land, this cannot enure to enlarge

enlarge the eſtate, but to extinguiſh the rent in reſpect of the privity, as it was reſolved (b) in the Exchequer, which I obſerved.

(b) Mich. 39. & 40 Eliz. in Scaccario, between Sir Henry Woodhouſe, and Sir William Paſton.

A man granteth the next avoidance of an Advowſon to two, the one of them may before the Church become void releaſe to the other; for although the grantor cannot releaſe to them to increaſe their eſtate, becauſe their intereſt is future, and not in poſſeſſion, yet one of them to extinguiſh his intereſt may releaſe to the other in reſpect of the privity. But after the Church become void, then ſuch a releaſe is void, becauſe then it is (as it were) but a thing in action. And this was reſolved (c) by the whole Court of Common Pleas, which I my ſelf heard and obſerved. And by conſequent, in the caſe of Littleton, if a leaſe for years be made to two, albeit the leſſor before they enter cannot releaſe to them to enlarge their eſtate, yet one of them may before entry releaſe to the other.

(c) Paſch. 38 Eliz. in quare impedit per Benner, verſ. Epiſcopum de Norwich in Communi Banco.
Pl. Com. 423.

¶ *Mes tant ſolement un droit*, &c. Which is not ſo to be underſtood that he hath but a naked right, for then he could not grant it over; but ſeeing he hath Intereſſe termini, before entry, he may grant it over, albeit for want of an actual poſſeſſion he is not capable of a releaſe to enlarge his eſtate.

¶ *Mes ſi leſſee enter en meſme le terre*, &c. This is evident. And herein note a diverſity between a leaſe for life, and for years; for before the leſſee for years enter, a releaſe cannot be made unto him; but if a man make a leaſe for life, the Remainder for life, and the firſt leſſee dieth, a releaſe to him in the remainder and to his heirs is good before he doth enter to enlarge his eſtate; for that he hath an eſtate of a Freehold in Law in him, which may be enlarged by Releaſe before entry.

And where our Author ſpeaketh only of a Leſſee for years, the ſame Law it is of a tenant by Statute merchant or Staple, or Tenant by Elegit, or the like.

25 E. 3. 5. 2 E. 3 Confirmat. 14. 31. Aſſ. Pl. 13.

Sect. 460, 461.

¶ By theſe two Sections is to be obſerved a diverſity between a Tenant at will, and a Tenant at ſufferance, for a releaſe to a Tenant at will is good, becauſe between them there is a poſſeſſion with a privity but a Releaſe to a Tenant at ſufferance is void, becauſe he hath a poſſeſſion without privity. As if leſſee for years hold over his term, &c. a Releaſe to him is void, for that there is no privity between them; and ſo are the books that ſpeak of this matter to be underſtood.

21 H. 6. 37. 2 E. 4. 6. b. 7 E. 4 27. 8 E. 4. 16. 29 H. 6. Releaſe 6.

¶ * *Sed contrarium tenetur*, &c. This is of a new addition, and the book here cited ill underſtood, for it is to be underſtood of a Tenant at ſufferance.

¶ *De ſa teſte demeſne occupia.* He doth not ſay, De ſa teſte

¶ EN meſme le maner eſt, come il ſemble, ou leaſe eſt fait a un home, a tener de l'leſſor a ſa volunt̄, per force de quel leas le leſſee eit poſſeſſion, ſi le leſſor en ceſt caſe fait un releas al leſſee, de tout ſon droit, &c. ceſt releas eſt aſſets bone pur le privitie que eſt penter eux, car en vain ſerra de faire eſtate per un livery de ſeiſin a un auter, lou il ad poſſeſſion de meſmes les tenements per le leas de meſm̄ celuy devant, &c.

¶ * Sed contrarium tenetur, Paſ. 2. Ed. 4. per touts les Juſtices.

IN the ſame manner it is, as it ſeemeth, where a Leaſe is made to a man to hold of the leſſor at his will, by force of which Leaſe the Leſſee hath poſſeſſion, if the leſſor in this caſe make a releaſe to the Leſſee of all his right, *&c.* this releaſe is good enough for the privity which is between them; for it ſhall be in vain to make an eſtate by a livery of ſeiſin to another where he hath poſſeſſion of the ſame land by the leaſe of the ſame man before, *&c.*

But the contrary is holden, *Paſch. 2. Ed. 4.* by all the Juſtices.

Section

Sect. 461.

¶ Mes lou home de ſa teſte demeſne occupia terres ou tenemẽts a la volunt celuy que ad le Franktenemẽt, & tiel occupier ne claima riens forſq; a volunt, &c. ſi celuy que ad le Franktenemẽt voile releaſer tout ſõ droit al occupier, &c. tiel Releaſe eſt void, pur ceo q̃ nul privity eſt perenter eux per leaſe fait a l' occupier, ne p̃ auter manner, &c.

BUT where a man of his own head occupieth Land or Tenements at the will of him which hath the Freehold, and ſuch occupier claimeth nothing but at will, &c. if he which hath the freehold will releaſe all his right to the occupier, &c. this Releaſe is void, becauſe there is no privity between them by the leaſe made to the occupier, nor by other manner, &c.

demeſne enter, &c. ſo as this is to be underſtood of a Tenant at ſufferance, viz. where a man cometh to the poſſeſſion firſt lawfully, and holdeth over. Vide Sect. 68.

(m) For if a man entreth into Land of his own wrong, and take the profits, his words to hold it at the will of the owner cannot qualifie his wrong; but he is a Diſſeiſor, and then the Releaſe to him is good, or if the owner conſented thereunto, then he is a Tenant at will, and that way alſo the Releaſe is good. But there is a diverſity when one cometh to a particular Eſtate in land by the Act of the party, and when by Act in Law; for if the Gardian hold over, he is an Abator, becauſe his intereſt came by act in Law.

(m) Temps H.8. tit. Tenant a volunt. Br. 15. 2 E.4.38. 18 E.4.25. 39 E.3.28. 12 E.3 Aſſ. 86. 1 E.3. ibid. 87. 12 Aſſ.21. 13 E.3. Aſſ.92. 28 Aſſ.11. 24 Aſſ. 10. 10 E.3.41. 8 E.3.63.

Vide 2. part of the Inſtitutes Marlb. ca.16. & 10 E.4.9,10.

¶ *Nul Privitie.* Privitie, is a word common as well to the Engliſh as to the French, and in the underſtanding of the Common Law is four-fold.

Old N. B. 117. 137. Lib.3. fol.23. Walkers caſe Lib.4.fol.123,124. Vide Sect. 454.

1. As Privies in Eſtate, whereof Littleton here ſpeaketh, as between the Donor and Donee, Leſſor and Leſſee, which privity is ever immediate.
2. Privies in Bloud as the Heir to the Anceſtor, or between Coparceners, &c.
3. Privies in Repreſentation, as Executors, &c. to the Teſtator.

And fourthly, Privies in Tenure, as the Lord and Tenant, &c. which may be reduced to two general heads, Privies in Deed, and Privies in Law.

Sect. 462, & 463.

¶ Item, ſi home enfeoffe auũs hões de ſa terre, ſur confidence, & al entent de performer ſa darreiſt volunt, & le Feoffor occupiaſt meſm̃ la ten̄ a l'volunt de ſes feoffees, & puis les feoffees releſſont per lour fait a lour feoffor tout lour droit, &c. ceo ad eſt un queſtion, ſi tiel releaſe ſoit bon ou non. Et aſcuns ont dit q̃ tiel releaſe

ALſo, if a man enfeoff other men of his land, upon confidence, and to the intent to perform his laſt will, and the Feoffor occupieth the ſame Land at the will of his Feoffees, and after the Feoffees releaſe by their Deed to their Feoffor all their right, &c. this hath been a queſtion, if ſuch releaſe be good or no. And ſome have ſaid, that

¶ HEre is a queſtion moved, and the reaſons of both ſides ſhewed, and as it hath been obſerved, the latter opinion is the better, being Littletons own opinion.

12 E.4.12.b. 15 E.4. 9 H.7.25. Vide Sect.302.176. 340.

¶ *Il ſerra entendue per la Ley que le Feoffor doit maintenant occupie la terre a la volunt de les Feoffees.* For intendments of Law mentioned by our Author, ſee the Sections in the margent.

4 E.4.8.b. 9 H.7.fol. ultimo. 15 H.7.2.b. 14 H.8.9.a.

Here is to be obſerved the intendment of Law, that when a Feoffment is made to a future uſe, as to the performance of his laſt will, the Feoffees

Sect.99.100,110,367. 377,393,406,340.

35 H.6. Subpœna 22. 15 H.7.12.b. 37 H.9.16. 11 H.4.52. 7 H.4.22. 1 Mar.111. Dyer.

Feoffées ſhall be ſeiſed to the uſe of the Feoffor and of his Heirs in the mean time.

Ipſæ etenim Leges cupiunt ut jure regantur.

And reaſon would that ſeeing the Feoffment is made without conſideration, and the Feoffor hath not diſpoſed of the profits in the mean time, that by conſtruction & intendment of Law the Feoffor ought to occupy the ſame in the mean time. And ſo it is, when the Feoffor diſpoſeth the profits for a particular time in præſenti, the uſe of the Inheritance ſhall be to the Feoffor and his heirs, and a thing not diſpoſed of. Wherein it is to be obſerved, That Lands and Tenements conveyed upon confidences, uſes, or truſts, are to be ruled and decided, if queſtion groweth upon the confidences, uſes, or truſts, by the Judges of the Law: for that it appeareth by this and the next Section, they are within the Entendment and conſtruction of the Laws of the Realm.

35 H.6. Subpœna 22. 30 H.6. tit. Deviſe.

And it is to be obſerved (as hath been ſaid) that there is a diverſity between a Feoffment of lands at this day upon confidence, or to the intent to perform his laſt will, and a Feoffment to the uſe of ſuch perſon, and perſons, and of ſuch eſtate and eſtates as he ſhall appoint by his laſt will; for in the firſt caſe, the Land paſſeth by the Will, and not by the Feoffment; for after the Feoffment the Feoffor was ſeiſed in Fee ſimple as he was before; but in the latter Caſe the Will purſuing his power is but a direction of the uſes of the Feoffment, and the Eſtates paſs by execution of the uſes which were raiſed upon the Feoffment; but in both caſes the Feoffées are ſeiſed to the uſe of the Feoffor and his Heirs in the mean time; and all this, and much more concerning this matter hath been adjudged.

Lib. 6. fol. 17. 18. Sir Edward Cleres caſe. Diſton & Frayns caſe b. &c. fol. 113.

Note, uſes are raiſed either by tranſmutation of the Eſtate, as by Fine, Feoffment, Common recovery, &c. or out of the ſtate of the owner of the Land, by bargain and ſale by Deed indented and inrolled, or by Covenant upon lawful conſideration; whereof you may read plentifully in my Reports.

A Feoffee to the uſe of A. and his heirs before the Statute of 27 H.8. for money bargaineth and ſelleth the Land to C. and his heirs, who hath notice of the former uſe; yet no uſe paſſeth by this bargain and ſale, for there cannot be two uſes in Eſſe, of one and the ſame Land; and ſeeing there is no tranſmutation of poſſeſſion by the Ter-tenant, the former uſe can neither be extinct nor altered. And if there could be two uſes of one and the ſame Land, then could not

eſt voyd, pur ceo que nul privitie fuit perrenter les Feoffees & lour Feoffor, entant que nul Leaſe fuit fait apres tiel Feoffement per les Feoffées al Feoffor, a tener a lour volunt. Et aſcuns ont dit le contrarie, et ceo pur deux cauſes.

ſuch Releaſe is void, becauſe there was no privity between the Feoffees and their Feoffor, inſomuch as no Leaſe was made after ſuch Feoffment by the Feoffees to the Feoffor, to hold at their will: and ſome have ſaid the contrary, and that for two cauſes.

Sect. 463.

¶ UN eſt, Que quãt tiel feoffment eſt fait pur confidence a performer la volunt del Feoffor il ſerra intendue per la Ley, que le Feoffor doit maintenant occupier la terre a la volunt de ſes Feoffées & iſſint ils tiel manner de privitie enter eux ſicome home fait un Feoffement as auters, & ils incontinent ſur le Feoffment, voylent & granteront que lour Feoffor occupier a la Terre a lour volunt, &c.

ONe is, That when ſuch Feoffment is made upon confidence to perform the will of the Feoffee, it ſhall be intended by the Law, that the feoffor ought preſently to occupy the Land at the will of his Feoffees; and ſo there is the like kind of privity between them; as if a man make a Feoffment to others, & they immediately upon the Feoffment will and grant, that their Feoffor ſhall occupy the Land at their will, &c.

not the ſaid Statute execute either of them for the uncertainty. But if A. diſſeiſe one to the uſe of B. and A. doth bargain and ſell the land for money to C. C. hath an uſe: and here be two uſes of one land, but of ſeveral natures, the one, viz. upon the bargain and ſale to be executed by the Statute, and the other not.

But ſince Littleton wrote, all uſes are transferred by Act of Parliament, (c) into poſſeſſion; ſo as the caſe which Littleton here puts is thereby altogether altered. Yet it is neceſſary to be known what the Common Law was before the making of the Statute, and may ſerve for the knowledge of the Law in like caſe. (c) 27 H.8. cap.10.

¶ *Incontinent ſur le Feoffment.* Quæ incontinenti fiunt ineſſe videntur.

¶ *A lour volunt, &c.* Here is implyed, every Tenancy at will is at the will of both parties, as before in his proper place hath been ſhewed.

Sect. 464.

¶ UN auter cauſe ils allegeont, Que ſi tiel fre bault xl. s. per an, &c. donque tiel Feoffor ſerra jure en Aſſiſes et en auters enqueſts en pleas realx, & auxy en Pleas perſonals de quel graund ſum que les Plaintiffes voilent counter, &c. Et ceo eſt per le Common Ley de la terre, Ergo, ceo eſt pur un graund cauſe, et la cauſe eſt, que la Ley voet que tiels Feoffors et lour Heires doient occupier, &c. et prender et enjoyer touts maner de profits, iſſues, & revenues, &c. ſicomes les Tenements fueront lour meſmes ſans interruption de les Feoffees, nient obſtant tiel Feoffment, Ergo, meſme la Ley done privitie perenter tiels Feoffors et

ANother cauſe they alledge, That if ſuch Land be worth forty ſhillings a year, &c. then ſuch Feoffor ſhall be ſworn in Aſſiſes and other enqueſts in Pleas reals, and alſo in Pleas perſonals, of what great ſumme ſoever the Plaintiff will declare, &c. And this is by the Common Law of the land, *Ergo*, this is for a great cauſe; and the cauſe is, for that the Law will that ſuch Feoffors and their Heirs ought to occupy, &c. and take and enjoy all manner of profits, iſſues, and revenues, &c. as if the Lands were their own, without interruption of the Feoffees, notwithſtanding ſuch Feoffement, *Ergo*, the ſame Law giveth a privity between ſuch Feoffors and the Feoffees upon confidence,

¶ BY the Statute of 2 H. 5. cap.3. Statut. 2. it is enacted, That in three caſes he that paſſeth in an Enqueſt, ought to have lands and Tenements to the value of forty ſhillings, viz. Firſt, upon tryal of the death of a man. Secondly, in Plea real betwixt party and party. And thirdly, in Plea perſonal, where the debt, or the damages in the Declaration amount unto forty Marks. And it is worth the noting, That the Judges that were at the making of that Statute did conſtrue it by equity: for where the Statute ſpeaks in the disjunctive, debt or damages, they adjudged that where the debt & damages amounted to forty Marks, that it was within the Statute. Forteſcue (f) ſaith, Ubi damna vel debitum in perſonalibus Actionibus non excedunt quadraginta Marcas monetæ Anglicanæ, hinc non requiritur, quod Juratores in Actionibus hujuſmodi tantum expendere poſſint: habebunt tamen terram vel redditum, ad valorem competentem, juxta diſcretionem Juſticiariorum, &c. And forasmuch as at the time of the making of this Statute, the greater part of the Lands in England in thoſe troubleſome and dangerous times (when that unhappy Controverſie between the houſes of York and Lancaſter was begun) were in uſe. And the Statute was made

28 H.8. Dyer fol.9. Vid. W.2. cap.38. Leſtat de 21 E.1. de Juratis ponendis in Aſſ. &c.

9 H.5. fol.5. (f) Forteſc. cap.15.

made to remedy a miſchief, that the Sheriff uſe to return ſimple men of ſmall or no underſtanding; and therefore the Statute provided, That he ſhould return ſufficient men, and albeit in Law the Land was the Feoffees, yet for that they had it but upon truſt, and Ceſtuy que uſe took the whole profits, as our Author here ſaith, and in equity and conſcience the land was his, therefore the Judges for advancement and expedition of Juſtice, extended the Statute (againſt the Letter) to Ceſtuy que uſe, and not to the Feoffees.

15 H.7.13.b. 13 H.7.7.b. 5 E.4.7.a.

(n) 3 H.6.39. Challenge 19. 21 H.6.39.

(n) But note if a man hath a Freehold pur terme dauter vie, or is ſeiſed in his Wives right, and is returned on a Jury, yet if after he is returned, Ceſtuy que vie, or his wife die, he may be challenged; and ſo it is if after the return the lands be evicted.

les Feoffées ſur confidence, &c. pur queux cauſes ils ont dit que tiels Releaſes faits per tiels Feoffées ſur confidence a lour feoffor ou a ſes heires, &c. iſſint occupant la tre, ſerra aſſets bon, & ceſt le melior opinion come il ſemble, &c.

¶ Quære, car ceo ſemble nul Ley a ceſt jour.

&c. for which cauſes they have ſaid, That ſuch releaſes made by ſuch Feoffees upon confidence to their feoffor or to his heirs, &c. ſo occupying the Lands, ſhall be good enough: and this is the better opinion, as it ſeemeth.

Quære, for this ſeemeth no Law at this day.

(g) 27 H.8. cap.10.

¶ *Et ceo eſt per le Common Ley.* Here three things are to be obſerved. Firſt, That the ſureſt conſtruction of a Statute is by the rule and reaſon of the Common Law. Secondly, That uſes were at the Common Law. Thirdly, That now ſince the Statute (g) of 27 H.8.ca.10. which hath been enacted ſince Littleton wrote, hath transferred the poſſeſſion of the uſe, this caſe holdeth not at this day; but this latter opinion before that was good Law, as Littleton here taketh it.

37 El. cap. 6.

¶ *Meſme la Ley done privitie, &c.* Hereof it followeth, That when the Law gives to any man any eſtate or poſſeſſion, the Law giveth a privity and other neceſſaries to the ſame: and Littleton concludeth it with an Illatiue; Ergo, meſme la Ley done privitie, which is very obſervable for a concluſion in other caſes.

Pl. Com.352. b. in Delameres caſe, & 349. b. Lib.1. fol.121,122,127, 140. in Chudleys caſe. Lib.2. fol.58.78. Lib.6. fol. 64. Lib.7. fol. 13, & 34.

And the (Quære) here made in the end of this Section is not in the Original, but added by ſome other, and therefore to be rejected.

Alſo ſince Littleton wrote, the ſaid Statute of 2 H.5. is altered: for where that Statute limited forty ſhillings, now a later Statute hath raiſed it to four pounds, and ſo it ought to be contained in the Venire facias.

Forteſc. cap.25,26,27.

Nota, an uſe is a truſt or confidence repoſed in ſome other, which is not iſſuing out of the land but as a thing collateral, annexed in privity to the eſtate of the land, and to the perſon touching the land, ſc. that Ceſtuy que uſe ſhall take the profit, and that the Ter-tenant ſhall make an eſtate according to his direction. So as Ceſtuy que uſe had neither Jus in re, nor Jus ad rem, but only a confidence and truſt, for which he had no remedy by the Common Law; but for breach of truſt his remedy was only by Subpœna in Chancery: and yet the Judges for the cauſe aforeſaid made the ſaid conſtruction upon the ſaid Statute.

Now how Jurors ſhall be returned both in Common Pleas, and alſo in Pleas of the Crown, and in what manner evidence ſhall be given to them, and how they ſhall be kept until they give their verdict, you may read in Forteſcue, and therefore need not to be here inſerted.

Sect. 465.

Flet. lib.5..cap.34. 15 H.7.14. 22 E.4.4.

¶ IT is a certain rule, that when a releaſe doth enure by way of Enlarging of an Eſtate, that there muſt be privity of Eſtate, as between Leſſor and Leſſee, Donor and Donee. For if A. make a leaſe to B. for life, and the

¶ Item, Releaſes ſolonque le matter en fait, aſcun foits ont lour effect per force denlarger leſtate celuy, a que

Alſo, Releaſes according to the matter in fact, ſometimes have their effect by force to enlarge the ſtate of him to

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le releaſe eſt fait, Sicome jeo leſſa certain terre a un home pur terme des ans, per force de que il eſt en poſſ. & puis jeo releſſa a luy tout le droit que jeo aye en le terre ſans pluis parolx mitter en le fait, & deliver a luy le fait, donques il ad eſtate forſque pur terme de ſa vie. Et la cauſe eſt, pur ceo que quant le reverſion ou le remainder eſt en un home, le quel voile enlarger per ſon releas leſtate le tenant, &c. il navera pluis greinder eſtate mes en tiel maner & forme, ſicome tiel feoffor fuit ſeiſie en fee, & voiloit per ſon fait faire eſtate a un en certain forme, & deliver a luy ſeiſin per force de meſme la fait: ſi en tiel fait de feoffement ne ſoit aſcun parol de enheritance, donques il ad forſque eſtate pur terme de vie, & iſſint il eſt en tiels releales faits per eux en la reverſion, ou en le remainder. Car ſi jeo leſſa la terre a un home pur terme de ſa vie, & puis jeo releſſa a luy tout mon droit, ſauns pluis dire en le releas, ſon whom the releaſe is made. As if I let certain Land to one for term of years, by force whereof he is in poſſeſſion, and after I releaſe to him all the right which I have in the land, without putting more words in the Deed, and deliver to him the Deed, then hath he an eſtate but for term of his life. And the reaſon is, for that when the reverſion or remainder is in a man who will by his releaſe enlarge the eſtate of the Tenant, &c. he ſhall have no greater eſtate, but in ſuch manner & form, as if ſuch Leſſor were ſeiſed in fee, and by his Deed will make an eſtate to one in a certain form, and deliver to him ſeiſin by force of the ſame Deed: if in ſuch Deed of feoffement there be not any word of Inheritance, then he hath but an eſtate for life, & ſo it is in ſuch Releaſes made by thoſe in the reverſion or in the remainder. For if I let land to a man for term of his life, and after I releaſe to him all my right without more ſaying in the releaſe, his eſtate is not

Leſſee maketh a Leaſe for years, and after A. releaſeth to the Leſſee for years, and his heirs, this releaſe is void to enlarge the eſtate, becauſe there is no privity between A. and the Leſſee for years.

If a man make a leaſe for twenty years, and the Leſſee make a leaſe for ten years, if the firſt Leſſor doth releaſe to the ſecond leſſee and his heirs, this releaſe is voyd for the cauſe aforeſaid.

For the ſame cauſe, if the Donee in tail make a Leaſe for his own life, and the Donor releaſe to the Leſſee and his heirs, this releaſe is void to enlarge the eſtate.

And as privity is neceſſary in this caſe, ſo privity onely is not ſufficient. As if an Infant make a Leaſe for life, and the Leſſee granteth over his eſtate with warranty, the Infant at full age bringeth a Dum fuit infra ætatem, the Tenant voucheth his Grantor, who entreth into warranty, the demandant releaſeth to him and his heirs; Here is privity in Law, and a tenancy in ſuppoſition of Law, and yet becauſe he in rei veritate hath no eſtate, it cannot enure to him by way of inlargement; for how can his eſtate be enlarged, that hath not any?

If a Tenant by the courteſie grant over his eſtate; yet he is tenant as to an Action of Waſte, Attornment, &c. and yet a Releaſe to him and his heirs cannot enure to enlarge his eſtate that hath no eſtate at all.

But if a man make a leaſe for years, the remainder for life, a Releaſe by the leſſor to the Leſſee for years, and to his heirs, is good: for that he hath both a privity and an eſtate, and the releaſe alſo to him in the remainder for life and his heirs, is good alſo.

If I grant the reverſion of my Tenant for life, to another for life, now ſhall not I have an Action of Waſte: but if I releaſe to the Grantee for life, and his heirs, now he hath

48 E. 3. 16. a. per Perſay & Finchden. 41 E. 3. 17. a. 7 E. 4. 17.

hath the Fee ſimple, and ſhall puniſh the waſte done after.

It is further to be obſerved, that to a releaſe that enureth by way of enlargement of the eſtate, there is not onely required privity as hath been ſaid, and an eſtate alſo, but ſufficient words in Law, to raiſe or create a new eſtate. If a man make a leaſe to A. for term of the life of B. and after releaſe to A. all his right in the land, by this A. hath an eſtate for term of his own life; for a leaſe for term of his own life is higher in judgment of Law, then an eſtate for term of another mans life.

ſon eſtate neſt my enlarge. Mes ſi jeo releſſa a luy & a ſes heirs, donques il ad fée ſimple, & ſi jeo releſſa a luy & ſes heires de ſon corps engendres, donques il ad fée taile, &c. Et iſſint il covient de ſpecifier en le fait que leſtate celuy a que le releas eſt fait avera.

enlarged: but if I releaſe to him and to his heirs, then he hath a Fee ſimple; and if I releaſe to him and to his heirs of his body begotten, then he hath a Fee tail, &c. And ſo it behoveth to ſpecifie in the Deed what eſtate he to whom the Releaſe is made ſhall have.

16 H.6. releaſe 45.
22 E.2. releaſe Statham.
(a) 13 H.4.6. Stanf. prer.7.b.
18 E.4.5. 22 Aſſ.12.
11 H.7.19. 10 H.6.11.

If a Feme Covert be Tenant for life, a leaſe to the husband and his heirs is good, for there is both privity and an eſtate in the husband, whereupon the releaſe may ſufficiently enure by way of enlargement; (a) for by the entermarriage he gaineth a Freehold in his wives right.

¶ *Tout le droit.* Vide Sect. 650.

¶ *Pur terme des ans.* So it is if a Releaſe be made to Tenant by Statute Staple, or Merchant, or Tenant by Elegit, as hath been ſaid; and ſo likewiſe to Gardein in Chivalry which holdeth in for the value, by him in the reverſion of all his right in the land, by this a Freehold paſſeth for the life of him to whom the releaſe is made; for that is the greateſt eſtate that can paſs without apt words of Inheritance.

If a man make a leaſe for ten years, the remainder for twenty years, he in the remainder releaſeth all his right to the Leſſee, he ſhall have an eſtate for thirty years, for one Chattel cannot drown another, and years cannot be conſumed in years.

¶ *Mes ſi jeo Releaſe a luy & a ſes heires, &c.* Here it is to be obſerved, that when a releaſe doth enure by way of enlargement of an eſtate, no Inheritance either in Fee ſimple or Fee tail, can paſs without apt words of Inheritance.

9 Eliz. Dier.263. 10 El. Bendloes. Littl. lib.3.f.68.69. 70. b. 130. b.

But there is a diverſity between a Releaſe that enureth by way of enlargement of the ſtate, and by way of mitter leſtate; for when an eſtate paſſeth by way of mitter leſtate, there ſometime there need not any words of Inheritance. As if a joynt eſtate be made to the husband and to his wife, and to a third perſon and to their heirs, the third perſon releaſeth all his righe to the husband, this ſhall enure by way of mitter leſtate, and not by way of enlargement of the eſtate, becauſe the husband had a Fee ſimple, and needeth not to have any words of Inheritance. So it is if the Releaſe had been made to the Wife.

See before in the chapter of Fee ſimple.
(b) 40 E.3.41. 46 E.3. 19 H.6. 33 H.6.5. 10 E.4.3.

(b) If there be three Joyntenants, and one releaſe to one of the other all his right, this enureth by way of mitter leſtate, and paſſeth the whole Fee ſimple without theſe words (heirs.) But if there be two Joyntenants, and the one of them releaſe all his right to the other, this doth not to all purpoſes enure by way of mitter leſtate, for it maketh no degree; and he to whom the Releaſe is made ſhall for many purpoſes be adjudged in from the firſt feoffor, and this Releaſe ſhall veſt all in the other Joyntenant without theſe words (heirs.)

10 E.4.3. b. 37 H.8. tit. alienation. Br.31. 8 H.4.8. 40 Aſſ.5. 9 Eliz. Dier.263.

But if there be two Coparceners, and the one releaſe all his right to the other, this ſhall enure by way mitter leſtate, and ſhall make a degree, and without theſe words (heirs) ſhall paſs the whole Fee ſimple. And it is to be obſerved, that to Releaſes that enure by way of mitter leſtate, there muſt be privity of eſtate at the time of the Releaſe.

If two Coparceners be of a Rent, and the one of them taketh the Ter-tenant to husband, the other may releaſe to her, notwithſtanding the Rent be in ſuſpence and it ſhall enure by way of mitter leſtate, and ſhe may releaſe alſo to the Ter-tenant, and that ſhall enure by way of extinguiſhment: but if ſhe releaſe to her ſiſter and to her husband, it is good to be ſeen how it ſhall enure.

Vide Litt. fol.68,69.

Littleton having now ſpoken of Releaſes that enure by way of enlargement of the eſtate, and of releaſes that enure by way of mitter leſtate, proceedeth to releaſes that enure by way of mitter le droit. So as of that which hath been and ſhall be ſaid by our Author of releaſes, it appeareth that ſome do enure by way of Enlargement of eſtate, ſome by way of mitter leſtate, ſome by way of Mitter le droit, by way of Entry and Feoffment, and ſome by Extinguiſhment.

Sect.

Sect. 466.

¶ Item, aſcuns foits releaſes urera de mitter & veſter le droit celuy que fait le Releaſe, a celuy a que le releas eſt fait. Sicome un home eſt diſſeiſie, & il releſſa a ſon diſſeiſor tout le droit que il ad, en teſt cas le diſſeiſor ad ſon droit, iſſint que lou ſon eſtate adebāt fuit tortious, ore per tiel releas il eſt fait loyal & droiturel.

ALſo, ſometimes Releaſes ſhall enure de mitter and veſt the right of him which makes the Releaſe to him to whom the Releaſe is made. As if a man be diſſeiſed, and he releaſeth to his diſſeiſor all his right; in this caſe the diſſeiſor hath his right, ſo as where before his ſtate was wrongful, now by this releaſe it is made lawfull and right.

¶ *ET il releſſa a ſon diſſeiſor, &c.* This releaſe ſo putteth the right of the diſſeiſee to the Diſſeiſor, that it changeth the quality of the eſtate of the Diſſeiſor, for where his eſtate was before wrongful, it is by this releaſe made lawful. But how far and to what reſpects his eſtate is changed ſhall be ſaid hereafter in this Chapter, in his proper place.

Sect. 467.

¶ MEs hic nota, q̄ quant home eſt leiſie en fee ſimple, dalcun terres ou tenements, & un auter voile releaſer a luy tout le droit que il ad en meſmes les tenūts, il ne beſoigne de parler de les heires celuy a que le releas eſt fait, pur ceo que il avoit fe ſimple al temps de releas fait. Car ſi releas fuit fait a luy pur un jour, ou pur un heure, ceo ſerroit auxy fort a luy en ley, ſicome il uſt releas a luy & a ſes heires. Car quant ſon droit fuit ale de luy a un foits per ſon releas ſans aſcun condition

BUt here note, that when a man is ſeiſed in fee ſimple of any lands or tenements, & another will releaſe to him all the right which he hath in the ſame tenements, he needeth not to ſpeak of the heirs of him to whom the releaſe is made, for that he hath a fee ſimple at the time of the releaſe made: for if the releaſe was made to him for a day or an hour, this ſhall be as ſtrong to him in law, as if he had releaſed to him and his heirs. For when his right was once gone from him by his Releaſe without any con-

¶ *IL ne beſoigne a parler de les heirs, &c.* And the reaſon of Littleton hereof is, for that the Diſſeiſor hath a Fee ſimple at the time of the Releaſe made. and this appeareth by that which hath been ſaid before. ſo as regularly he that hath a Fee ſimple at the time of the Releaſe made of a right, &c. needeth not ſpeak of his heirs.

¶ *Car ſi releaſe fuit fait a luy pur un jour, &c.* For the diverſity is between a Releaſe of part of the eſtate of a Right, and between a releaſe of a Right in part of the Land. And therefore Littleton here ſaith, that a Releaſe of a Right for a day or an hour is of as good force, as if he had releaſed his right to him and his heirs. But if a man be diſſeiſed of two acres, he may releaſe his right in one of them, and yet enter into the other.

Vide 6 E. 3. 17. 12 E. 4. tit. Deſcent. F. 29.

¶ *Sans aſcun condition,*

tion, &c. Herein is implied two diverſities, firſt between the quantity of the eſtate in a Right, and the quality thereof, for albeit the Diſſeiſee cannot releaſe part of the eſtate, as hath been ſaid; yet may he releaſe his right upon condition, as here it appeareth by Littleton, (c) and it agreeth with our Books.

ſr. a celuy que ad fée ſimple, il eſt ale a touts jours.

dition, &c. to him that hath the fee ſimple, it is gone for ever.

(c) 4 E. 3. Releaſe 50. 43 Aſſ. 12. 17 Aſſ. 2. 21 Aſſ. 13. 21 H. 24.

Alſo here is another diverſity between a right, whereof Littleton putteth his caſe, which is favoured in Law, and a condition created by the party which is odious in Law, for that it defeateth eſtates. And therefore if a condition be releaſed upon condition, the Releaſe is good, and the condition void.

What things may be done upon condition is too large a matter to handle in this place; our Author having treated of conditions before; onely to give a touch of ſome things omitted there, ſhall ſuffice. An expreſs Manumiſſion of a Villein cannot be upon condition, for once free in that caſe, and ever free; alſo an Attornment to a Grantee upon condition, the condition is void becauſe the Grantee is once ſeiſed. But this is to be underſtood of a condition ſubſequent, and not of a condition precedent; for in both thoſe caſes the condition precedent is good. But Letters patents of Denization made to an Alien may be either upon condition ſubſequent or precedent; and ſo may the King make a Charter of pardon to a man of his life upon condition, as is aboveſaid.

Rot. Parliament. 18 H. 6. num. 29. Ap. Gwilliams caſe. 10 E. 3. cap. 2. 3 H. 7. f. 6.

Sect. 468.

¶ Mes lou home ad un reverſion en fée ſimple, ou un remainder en fée ſimple, al temps de releas fait, la ſil voile releaſer al tenant per terme dans, ou pur terme de vie, ou al tenant en le taile, il covient a determiner leſtate que celuy, a que le releas eſt fait avera per force de meſme le releas, pur ceo que tiel releas enurera pur enlarger leſtate de celuy, a que le releas eſt fait.

But where a man hath a reverſion in fee ſimple, or a remainder in fee ſimple, at the time of the releaſe made, there if he will releaſe to the tenant for years, or for life, or to the tenant in tail, he ought to determine the Eſtate, which he to whom the releaſe is made ſhall have by force of the ſame releaſe, for that ſuch releaſe ſhall enure to enlarge the eſtate of him to whom the releaſe is made.

Of this ſufficient hath been ſaid before.

Sect. 469.

¶ Mes auterment eſt lou home ad forſque droit a la terre, e nad riens en le reverſion ne en le remainder en fait. Car ſi tiel home releſſa tout ſon droit a un que eſt tenant de le franktenement, tout ſon droit eſt ale, coment que nul mention ſoit fait de les heires celuy a que le releas eſt fait. Car ſi jeo leſſa terres a un home pur terme

But otherwiſe it is where a man hath but a right to the Land, and hath nothing in the reverſion, nor in the remainder in Deed. For if ſuch a man releaſe all his right to one which is tenant of the Freehold, all his right is gone, albeit no motion be made of the heirs of him to whom the Releaſe is made: for if I let lands to one for term of his life, if I after releaſe

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de la vie, ſi jeo puis releaſe a luy pur enlarger ſon eſtate, il covient que jeo releſſa a luy & a ſes heires de ſon corps engender, ou a luy & a ſes heires, ou per tiels parols: A aver & ten̄ a luy & a ſes heires de ſon corps engendres, ou a les heires males de ſon corps engendres, ou tiels ſemblables eſtates, ou autrement il nad pluis greinḍ eſtate q̄ il avoit adevant.

to him to enlarge his eſtate, it behoveth that I releaſe to him and his heirs of his body engendred, or to him and his Heirs, or by theſe words: To have and to hold to him and his heirs, of his body engendred, or to the Heirs males of his body engendred, or ſuch like eſtates, or otherwiſe he hath no greater eſtate then he had before.

¶ A *Un que eſt Tenant de Franktenement.* Here it appeareth, that to a Releaſe of a right made to any that hath an eſtate of Freehold in Deed or in Law, no privity at all is requiſite. As if a Diſſeiſor make a Leaſe for life, if the Diſſeiſee releaſe to the Leſſee, this is good, and directly within the rule of Littleton, becauſe the Leſſee hath an eſtate of Freehold, albeit there be no privity. And ſo it is if a Diſſeiſor make a Leaſe to A. and his Heirs during the life of B. and A. dieth, a releaſe by the Diſſeiſee to his Heir, before he doth actually enter, is good.

Sect. 470.

¶ Mes ſi mon ten̄ a terme de vie, leſſa meſme la tre ouſter a un auter pur terme de vie de ſon Leſſee, le Remainder a un auter en fee, ore ſi jeo releſſa a celuy a que mon Tenant leſſaſt pur terme de vie, ceo ſerra barre a touts jours, coment que nul mention ſoit fait de ſes heires, pur ceo que al temps de releaſe fait jeo aboy nul reverſion, mes tantſolement un droit daver la reverſion: car p̄ tiel leas, & le remainder ouſter que mon Ten̄t fiſt en ceo cas mon reverſion fuit diſcontinue, &c. & tiel releas urera a celuy en l' remainder, daver advantage de ceo auſſibien come al Tenant a terme de vie.

BUT if my Tenant for life letteth the ſame Land over to another for term of the life of his Leſſee, the remainder to another in Fee; now if I releaſe to him to whom my Tenant made a leaſe for term of life, I ſhall be barred for ever albeit that no mention be made of his Heirs, for that at the the time of the releaſe made I had no reverſion, but only a right to have the reverſion. For by ſuch a releaſe and the remainder over which my Tenant made, in this caſe my reverſion was diſcontinued, &c. and this releaſe ſhall enure to him in the remainder to have advantage of it as well as to the Tenant for term of life.

¶ Littleton having before ſpoken of releaſes, which enure by way of enlargement, by way of mitter leſtate, and by way of mitter le droit, here ſpeaketh of a releaſe of a right which in ſome reſpects entreth by way of extinguiſhment, as in this caſe which Littleton here puteth, the Releaſe to the Leſſee of the Leſſee doth not enure by way of mitter le droit, for then ſhould he have the whole right, but as it were by way of extinguiſhment, in reſpect of him that made the releaſe, and that it ſhall enure to him in the remainder, which

is a quality of an inheritance extinguiſhed. But yet the right is not extinct in Deed, as ſhall be ſaid hereafter in this Chapter.

¶ *Mon reverſion fuit diſcontinue, &c.* Here Diſcontinue is in a large ſenſe taken for Deveſted, though the entry of the Leſſor be not taken away, which is implyed in this (&c.)

Sect. 471.

¶ *Sont come un Tenant en Ley.* Which is certainly true in this caſe of remainder; and ſo it is alſo in caſe of a reverſion; as if a Diſſeiſor make a leaſe for life, and the Diſſeiſee doth releaſe all his right to the Leſſee, this Releaſe ſhall enure to him in the Reverſion, albeit they have ſeveral eſtates, as hath been ſaid, which is implyed in this (&c.)

But if a Diſſeiſor make a leaſe for life, the remainder in fee, albeit they to ſome purpoſes (as here is ſaid) are as one Tenant in Law; yet if the Diſſeiſee releaſe all Actions to the Tenant for life, after the death of the Tenant for life, he in the remainder ſhall not take benefit of this releaſe, for it extendeth only to the Tenant for life, as it is holden (a) in Edward Althams caſe. And in like manner, if the Diſſeiſor make a leaſe for life, and the Diſſeiſee releaſe all Actions to the Leſſee, this enureth not to him in the reverſion; and ſo our Author is to be underſtood of a releaſe of Rights, and not of a releaſe of Actions, to the Tenant for life, as to or for the benefit of him in the remainder or reverſion.

(a) Lib.8. fol.148. Edw. Althams caſe.

¶ Car a tel intent le Tenant a terme de vie, et celuy en le remainder ſont ſicome un Tenant en Ley, & ſont ſicome un Tenant fuit ſole ſeiſie en ſon demeſne come de fee al temps de tiel Releaſe fait a luy, &c.

FOR to this intent the Tenant for term of life, and he in the Remainder, are as one Tenant in Law, and are as if one Tenant were ſole ſeiſed in his Demeſne as of fee at the time of ſuch releaſe made unto him, &c.

Sect. 472.

¶ *Si home ſoit diſſeiſie, &c.* This is to be underſtood where Tenant in fee ſimple is diſſeiſed and releaſe; for if Tenant for life be diſſeiſed by two, and he releaſeth to one of them, this ſhall enure to them both; for he to whom the Releaſe is made, hath a longer eſtate then he that releaſeth, and therefore cannot enure to him alone, to hold out his companion, for then ſhould the Releaſe enure by way of entry and grant of his eſtate, and conſequently the Diſſeiſor to whom the releaſe is made ſhould become Tenant for life, and the Reverſion revеſted in the Leſſor; (b) which ſtrange tranſmutation and change of Eſtates in this caſe the Law will not ſuffer. But if Leſſee for years be ouſted, and he in the rever-

11 H. 6. 41.

(b) 13 E.4. tit. Deſcent. F. 29.

¶ Item, ſi home ſoit diſſeiſie pur deux, ſi releſſa a un d eux, il tiendra ſon compaignion hors de Terre, & per tiel Releaſe il avera le ſole poſſeſſion & eſtate en la Terre. Mes ſi un Diſſeiſor enfeoffa deux en Fee, & le Diſſeiſee releſſa a lun des feoffees, ceo urera a ambideux de les Feoffees, & la cauſe de diverſity ent ceux deux caſes eſt aſſets pregnant. ¶ Pur

ALſo, if a man be diſſeiſed by two, if he releaſe to one of them, he ſhall hold his Companion out of the Land, and by ſuch Releaſe he ſhall have the ſole poſſeſſion and Eſtate in the Land. But if a Diſſeiſor infeoffe two in fee, and the Diſſeiſee releaſe to one of the Feoffees, this ſhal enure to both the Feoffees, and the cauſe of the diverſity between theſe two caſes is pregnant e-

ceo

ceo que ils veignont eins per feoffment, & lauters per tort, &c.

nough. For that they come in by Feoffement, and the others by wrong, &c.

ſion diſſeiſed and the Leſſee releaſe to the Diſſeiſor, the Diſſeiſee may enter, for the term for years is extinct and determined. But otherwiſe it is in caſe of a Leſſee for life; for the Diſſeiſor hath a Freehold, whereupon the releaſe of Tenant for life may enure, but the Diſſeiſor hath no term for years, whereupon the releaſe of the Leſſee for years may enure.

And ſo it is if Leſſee in Tail be diſſeiſed by two, and releaſeth to one of them, it ſhall enure to them both. But if the Kings Tenant for life be diſſeiſed by two, and he releaſeth to one of them, he ſhall hold out his Companion, for the Diſſeiſor gained but the Eſtate for life. So if two Joyntenants make a Leaſe for life, and after do diſſeiſe the Tenant for life, and he releaſe to one of them, he ſhall hold out his Companion, for the Diſſeiſin was but of an Eſtate for life.

If Tenant for life be diſſeiſed by two, and he in the reverſion, and Tenant for life joyn in a Releaſe to one of the Diſſeiſors, he ſhall hold his Companion out; and yet it cannot enure by way of Entry and Feoffment. But if they ſeverally releaſe their ſeveral rights, their ſeveral Releaſes ſhall enure to both the Diſſeiſors.

But here, in Littletons caſe, where Tenant in Fee ſimple is diſſeiſed by two, and releaſeth to one of them, this for many purpoſes enureth by way of Entry and Feoffment, and therefore he to whom the Releaſe is made ſhall hold out his Companion, and be made ſole Tenant of the Fee ſimple. And this holdeth not only in caſe of a Diſſeiſin, but alſo in caſe of Intruſion and Abatement: but neceſſarily he to whom the Releaſe is made muſt be in by wrong, and not by Title.

If two men do gain an Advowſon by uſurpation, and the right Patron releaſeth to one of them, he ſhall not hold out his Companion, but it ſhall enure to them both; for having their Clerk came in by admiſſion and inſtitution, which are judicial acts, they are not meerly in by wrong: for an uſurpation ſhall cauſe a Remitter, as it appeareth in F.N.B. 13.m.

But if a Leaſe for life be made, the Remainder for life, the remainder in fee, and he in remainder for life diſſeiſeth the Tenant for life, and then Tenant for life dieth, the Diſſeiſin is purged, and he in the remainder for life hath but an Eſtate for life. And ſo note a diverſity, where the particular eſtate for life is precedent, and when ſubſequent. 19 H.6.22. 38 H.6.28. Caſe de Occupant.

Where our Author putteth his caſe of one diſſeiſed, put the caſe that two Joyntenants in Fee be diſſeiſed by two, and one of the Diſſeiſees releaſe to one of the Diſſeiſors all his right, he ſhall not hold out his Companion, becauſe the Releaſe is but of the moiety without any certainty.

If a man be diſſeiſed by two women, and one of them take Huſband, and the Diſſeiſee releaſe to the Huſband, this ſhall enure to the advantage of both the Diſſeiſors, becauſe the Huſband was no wrong-doer, but in a manner in by Title.

¶ *Il avera le ſole poſſeſſion & eſtate.* If two Diſſeiſors be, and they make a Leaſe for life, and the Diſſeiſee releaſe to one of them, this ſhall enure to them both, and to the benefit of the Leſſee for life alſo: for he cannot by the Releaſe have the ſole poſſeſſion and Eſtate, for part of the Eſtate is in another.

And ſo it is (as it ſeemeth) if the Diſſeiſors make a Leaſe for years, and the Diſſeiſee releaſe to one of them, this ſhall enure to them both; for by the Releaſe he cannot have the ſole poſſeſſion: And it appeareth by Littleton, That he muſt have the ſole poſſeſſion, and hold his Companion out. But the Mortgagee upon condition, having broken the condition, is diſſeiſed by two, the Mortgagor having title of Entry for the condition broken, releaſe to the one Diſſeiſor; albeit they be in by wrong, yet the Releaſe ſhall enure to them both for two cauſes: Firſt, for that they are not wrong-doers to the Mortgagor, but to the Mortgagee; and by Littletons caſe it appeareth, That wrong is done to him that made the Releaſe. Secondly, that he that makes the Releaſe hath but a Title by force of a Condition, and Littletons caſe is of a Right. Like Law of an entry for Mortmain, or a conſent to Radiſhment, &c.

¶ *Mes ſi un Diſſeiſor infeoffa deux, &c.* And the reaſon of this diverſity is, for that the Feoffees are in by Title, and are preſumed to have a Warranty, which is much favoured in Law, and the Diſſeiſors are meerly in by wrong. And the equity of the Law doth preſerve, in this caſe, the benefit of the eſtranger to the Releaſe, coming in by one joynt Title. 21 H. 6. 42.

¶ *Pur ceo que ils veignont eins per Feoffment, & lauters per Tort.* This is of a new addition, and not in the original, and therefore I paſs it over.

Sect.

Sect. 473.

¶ ITem, ſi jeo ſue diſſeiſie, & mon Diſſeiſor eſt diſſeiſie, ſi jeo releaſe a Diſſeiſor de mon Diſſeiſor, jeo navera a unq̃ aſſ. ne entra ſur le Diſſeiſor, pur ceo que ſon Diſſeiſor ad mon droit per mon releaſe, &c. Et iſſint il ſemble en tiel cas, ſi joyent xx. Diſſeiſors, cheſcun apres auter, & jeo releſſa a le darreine Diſſeiſor, celuy Diſſeiſor barrera touts les auters de lour actions & lour titles, Et la cauſe eſt, come il ſemble, pur ceo que en mults caſes, quant un home ad loyal title dentre, coment que il nentra pas, il defeatera touts meane titles per ſon releaſe, &c. Mes ceo neſt my en cheſcun caſe, come ſerra dit apres.

ALſo, if I be diſſeiſed, and my Diſſeiſor is diſſeiſed, if I releaſe to the Diſſeiſor of my Diſſeiſor, I ſhall not have an Aſſiſe nor enter upon the Diſſeiſor, becauſe his Diſſeiſor hath my right by my releaſe, &c. And ſo it ſeemeth in this caſe, if there be xx. diſſeiſed one after another, and I releaſe to the laſt Diſſeiſor, this Diſſeiſor ſhall bar all the others of their actions and their titles. And the cauſe is, as it ſeemeth, for that in many caſes when a man hath lawful title of entry, although he doth not enter, he ſhall defeat all mean titles by his releaſe, &c. but this holds not in every caſe, as ſhall be ſaid hereafter.

¶ Here it is to be obſerved, that a Releaſe by one whoſe Entry is lawfull to him that is in by wrong, ſhall purge and take away all mean Eſtates and Titles. And where our Author firſt putteth his caſe of two Eſtates by wrong, and after of twenty Diſſeiſins, all Eſtates be wrong.

21 H.6.41. 11 H.4.33. 9 H. 7.25. 2 E.4.16. 2 E.4 78. 12 Al.22. Vide 3 H.6.28.

If A. diſſeiſe B. who infeoffeth C. with warranty, who infeoffeth D. with warranty, and E. diſſeiſeth D. to whom B. the firſt Diſſeiſee releaſeth, this doth defeat all the mean Eſtates and Warranties, becauſe the releaſe of B. is made to a Diſſeiſor, and his Entry is lawfull.

Sect. 474.

¶ *ITem, ſi mon Diſſeiſor leſſa, &c.* If the Diſſeiſor make a Leaſe for life, and the Leſſee maketh a feoffment in Fee, and the Diſſeiſee releaſeth to the Feoffee, the Diſſeiſor ſhall not enter upon the Feoffee; for albeit the releaſe to one joynt-Feoffee of a Diſſeiſor, as hath been ſaid, ſhall not exclude the other; yet a Releaſe to the Feoffee of a Tenant for life in this caſe ſhall take away the Entry of the Diſſeiſor for the alienation which was made to his

¶ ITem, ſi mon diſſeiſor leſſa les tenements dont il moy diſſeiſiſt a un auter home pur terme de vie, & puis le Tenant a terme de vie aliena en fee, & jeo releſſa al alienee, &c. donque mon Diſſeiſor ne poit enter, Cauſa qua ſupra, coment que a un

ALſo, if my Diſſeiſor letteth the tenements whereof he diſſeiſed me to another for term of life, and after the Tenant for term of life alieneth in fee, and I releaſe to the Alienee, &c. then my Diſſeiſor cannot enter, *Cauſa qua ſupra*, albeit that at one

ſoits alienation fuit a ſon diſenheritance, &c.

time the alienation was to his diſinheritance, &c.

Diſ-enheritance, he having the Inheritance by diſſeiſin, ſo as he could have no warranty annexed to it, and Tenant for life hath forfeited his Eſtate. But if the entry of the Diſſeiſee were not lawful, it is otherwiſe. As if a man make a Leaſe for life, and the Leſſee for life is diſſeiſed, and that Diſſeiſor is diſſeiſed, and he in the reverſion releaſeth to the ſecond Diſſeiſor, the firſt Diſſeiſor ſhall enter upon the ſecond Diſſeiſor, and his entry is lawful; and if the Leſſee for life re-enter, he ſhall leave the reverſion in the firſt Diſſeiſor; and the cauſe is, for that the entry of the Diſſeiſor at the time of the Releaſe made was not lawful. And the Book of (m) 9 H. 7. 25. is to be intended of an Eſtate tail, mutatis mutandis. (m) 9 H. 7. 25.

If in the caſe aforeſaid, the Diſſeiſor make a Leaſe for life, and the Leſſee infeoffeth two, and the Diſſeiſee releaſe to one of the Feoffees, this ſhall bar the Diſſeiſor, as hath been ſaid; but yet he ſhall not hold out his Companion.

Sect. 475.

¶ Item, ſi home ſoit diſſeiſie, le dl ad fits deins age & mozuſt, & eſteant le fits deins age, le Diſſeiſoz mozuſt ſeiſie, et la terre diſcendiſt a ſon heir, & un eſtranger abate & puis le fits le Diſſeiſee quant il vient a ſõ plein age, releſſa tout ſon dzoit a labatoz, en ceſt caſe l'heire le Diſſeiſoz navera Aſſiſe de mozdanceſtoz ẽvers labatoz, mes ſerra bar, pur ceo que labatoz ad le dzoit del fits le Diſſeiſee p ſon releas, & lentry le fits fuit congeable, pur ceo que il fuit deins age temps del diſcent, &c.

ALſo, if a man be diſſeiſed who hath a ſon within age and dyeth, and the ſon being within age the Diſſeiſor dyeth ſeiſed, and the Land deſcend to his Heir, and a ſtranger abate, and after the ſon of the Diſſeiſee when he cometh to his full age releaſeth all his right to the Abator; in this caſe the heir of the Diſſeiſor ſhall not have an Aſſiſe of Mortdanceſtor againſt the Abator; but ſhall be barred, becauſe the Abator hath the right of the ſon of the Diſſeiſee by his Releaſe, and the entry of the ſon was congeable, for that he was within age at the time of the deſcent, &c.

¶ The reaſon of this caſe is, for that the entry of the heir is congeable, and the Abator is in the land by wrong.

¶ *Abate*, Is both an Engliſh and French word, and ſignifieth in his proper ſenſe to diminiſh or take away; as here by his entry he diminiſheth and taketh away the Freehold in Law deſcended to the heir, and ſo it is ſaid to abate an account, ſignifying ſubtraction or withdrawing, &c. and to abate the courage of a man; In another ſenſe it ſignifieth to proſtrate, beat down, or overthrow; as to abate Caſtles, Houſes, and the like, and to abate a writ; and hereof cometh a word of Art, Abatamentum, which is an Entry by Interpoſition. Now the difference inter Diſſeiſinam, Abatamentum, Intruſionem, Deforciamentum, & Uſurpationem, & Purpreſturam, is this. Vet. N.B. 115. Britton, cap. 51. Bracton, lib. 4. cap. 2. F.N.B. 203. f. W. 1. c. 25.

A Diſſeiſin is a wrongfull putting out of him that is actually ſeiſed of a Freehold.

An Abatement is when a man dyed ſeiſed of an eſtate of Inheritance, and between the death and the entry of the heir, an ſtranger doth interpoſe himſelf and abate.

Intruſion, firſt properly, (n) is when the Anceſtor dyed ſeiſed of any eſtate of Inheritance expectant upon an Eſtate for life, and then Tenant for life dyeth, and between the death and the entry of the Heir an eſtranger doth interpoſe himſelf and intrude. (n) F.N.B. 203 Fleta, lib. 4. cap. 30.

Secondly, (o) he that entreth upon any of the Kings Demeſnes, and taketh the profits, is ſaid to intrude upon the Kings poſſeſſion. (o) Pl. Com. caſe de mynes.

(p) F.N.B.141.f.g.h.

Thirdly, (p) when the Heir in ward entreth at his full age, without ſatisfaction for his marriage, the Writ ſaith, quod intruſit.

Deforciamentum comprehendeth not only theſe aforenamed, but any man that holdeth land whereunto another man hath right, be it by deſcent or purchaſe, is ſaid to be a Deforceor. Uſurpation hath two ſignifications in the Common Law; one, when an eſtranger that no right hath, preſenteth to a Church, and his Clerk is admitted and inſtituted, he is ſaid to be an uſurper, and the wrongful act that he hath done is called an Uſurpation.

Secondly, when any ſubject doth uſe without lawful warrant, Royal Franchiſes, he is ſaid to uſurp upon the King thoſe Franchiſes, Purpreſtura, or Pourpreſtura, a Purpreſture; (q) Purpreſtura eſt, &c. generaliter quoties aliquid fit ad nocumentum regii tenementi, vel regiæ viæ (vel aliquarum publicarum) vel civitatis, &c. And becauſe it is properly when there is a houſe builded, or an Incloſure made of any part of the Kings Demeſnes, or of an high way, or a common ſtreet or publick water, or ſuch like publick things; it is derived of the French word Pourpris, which ſignifieth an Incloſure; but ſpecially applyed, as is aforeſaid, by the Common Law.

(q) Glanvil, li.9.ca.11. Britton, fol.28,29.

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¶ HEre the entry of the Diſſeiſee is congeable, and yet the releaſe doth not avoid the Condition, becauſe the Feoffee is in by Title, as hath been ſaid, and may have a warranty. And herein our Author expreſſeth a diverſity between a Condition in Law, and a Condition in Deed; for in the caſe before, when the Diſſeiſee releaſeth to the Feoffee of the Tenant for life, the Condition in Law is taken away; but otherwiſe it is in this caſe of a Condition in Deed.

9 H. 7. 25.

Lib. 1. fo. 147. Mayowes Caſe.

But if the Feoffee upon Condition make a feoffment in fee over without any Condition, and the Diſſeiſee releaſe to the ſecond Feoffee, the Condition is deſtroyed by the releaſe before the Condition broken after. For the ſtate of the ſecond Feoffee was not upon any expreſs Condition, as Littleton here putteth his caſe, and he may have advantage of the Releaſe, becauſe it is not againſt his own proper acceptance, as Littleton ſpeaketh in the next Section.

¶ MES ſi home ſoit diſſeiſie, & le diſſeiſor fait feoffment ſur condition, ceſtaſcavoir, de rendre a luy certeine rent, & pur default d̄ payment un re-entre, &c. ſi le diſſeiſie releſſa al Feoffée ſur Condition, uncore ceo namendra leſtate le Feoffée ſur condition; car nient obſtante tiel releas, uncore ſon eſtate eſt ſur condition ſi come il fuit devant.

¶ Et cum hoc concordat opinio omnium Juſticiariorum, P. 9. H. 7. ¶

BUT if a man be diſſeiſed, and the diſſeiſor maketh a feoffment upon condition, *viz.* to render to him a certain rent, and for default of payment a re-entry, &c. if the Diſſeiſee releaſe to the Feoffee upon condition, yet this ſhall not amend the eſtate of the Feoffee upon condition; for notwithſtanding ſuch releaſe, yet his eſtate is upon condition as it was before.

¶ And with this agreeth the opinion of all the Juſtices, *Paſ.* 9. *H.* 7.

But if it be a wrongful Title, ſuch a Title is taken away by a Releaſe; as if A. diſſeiſed B. to the uſe of C. B. releaſe to A. this ſhall take away the agreement of C. to the Diſſeiſin, becauſe it ſhould make him a wrong doer; as if the Diſſeiſor be diſſeiſed, the Diſſeiſee releaſeth to the ſecond Diſſeiſee, this taketh away the right the firſt Diſſeiſor had againſt the ſecond; and a relation of an Eſtate gained by wrong ſhall never defeat an Eſtate ſubſequent gained by right againſt a ſingle opinion, not affirmed by any other in one of our Books.

14 H.8.18. per port.

Sect. 477.

¶ ET *le Diſſeiſor grant un Rentcharge, &c.* Here is implied Commons, or any other

¶ EN meſme le manner eſt, lou home ſoit diſſ. de certeine terre, & le diſſei-

IN the ſame manner it is where a man is Diſſeiſed of certain lands, and the Diſſeiſor, for

ſoꝛ graunt un rent charge hoꝛs de meſm̃ la terre, &c. coment que apꝛes le diſſeiſée releſſa al diſſeiſoꝛ, &c. uncoꝛe le rent charge demurt en ſa foꝛce. Et la cauſe en ceux deux caſes eſt ceo, q̃ home naera advantage per tiel releas q̃ ſerra encounter ſon pꝛoper acceptance, & encounter ſon grant demeſne: & coment q̃ alcuns ont dit que lou lentre ꝺ home eſt congeable ſur un tenant ſil releaſiſt a meſme le tenant, que ceo availeroit a le tenant, ſicome ſi uſt enter ſur le Tenant, et puis luy enfeoffa, &c. ceo neſt pas voier en cheſcun cas. Car en le pꝛimer cas de ceux deux avaunt-dits caſes, ſi le diſſeiſée uſt enter ſur l' feoffée ſur Condition, & puis luy enfeoffa, donques eſt le Condition tout defeat & avoid. Et ilſſint en le ſecond caſe ſi le diſſeiſie entraſt & enfeoffa celuy que grant a l' rent charge, donques eſt le rent charge anient, & avoyd mes il neſt pas avoyd per alcun tiel releaſe ſans entry fait, &c.

grant a rent charge out of the ſame land, &c. albeit the Diſſeiſee doth afterwards Releaſe to the Diſſeiſor, &c. yet the Rent-charge remaineth in force. And the reaſon in theſe two caſes is this, that a man ſhall not have advantage by ſuch Releaſe, which ſhall be againſt his proper acceptance, and againſt his own grant. And albeit ſome have ſaid, that where the entry of a man is Congeable upon a Tenant if he releaſeth to the ſame Tenant, that this ſhall avail the Tenant, as if he had entred upon the Tenant, and after enfeoffed him, &c. this is not true in every caſe; for in the firſt caſe of theſe two caſes aforeſaid, if the Diſſeiſee had entred upon the Feoffee upon Condition, and after enfeoffed him, then is the Condition wholly defeated and avoided, And ſo in the ſecond caſe, if the Diſſeiſee entreth and enfeoffeth him who granted the Rent-charge, then is the Rent-charge taken away and avoided; but it is not void by any ſuch Releaſe without entry made, &c.

pꝛofit out of the lands. And the reaſon is, becauſe he ſhall not avoid his own grant by a Releaſe he himſelf hath acquired ſince the Grant; but if the Diſſeiſor in that caſe be diſſeiſed, and the Diſſeiſee releaſe to the ſecond Diſſeiſor, he ſhall avoid it, as by that which hath been ſaid, Sect. 473. appeareth. So likewiſe if A. and B. be joint Diſſeiſors, and B. grant a Rent-charge, and the Diſſeiſee releaſe to A. all his right, A. ſhall avoid the Rent-charge, becauſe it was not granted by him; and ſo not within the reaſon of our Authoꝛ.

If there be two Femes joynt Diſſeiſors, and the one taketh husband, and the Diſſeiſee releaſe to the other, ſhe is ſole ſeiſed, and ſhall hold out the Husband and all.

If two Diſſeiſors be, and they infeoffe another and take back an Eſtate foꝛ life oꝛ in fee, albeit they remain diſſeiſors to the Diſſeiſee as to have an Aſſiſe againſt them; yet if he releaſe to one of them, he ſhall not hold out his companion, becauſe their ſtate in the Land is by Feoffment.

If there be two Diſſeiſors and they be diſſeiſed, and they releaſe to their Diſſeiſor, and after diſſeiſe him and then the Diſſeiſee releaſe to one oꝛ both of them, yet the ſecond Diſſeiſor ſhall re-enter; foꝛ they ſhall not hold the land againſt their own releaſe; foꝛ Littleton here ſaith, that they ſhall not avoid their own Grant, and by like reaſon they ſhall not avoid their own releaſe. Et ſic de ſimilibus.

¶ *Come ſil uſt enter ſur le tenant & luy enfeoffé.* Here is another kind of Releaſe, viz. a Releaſe which enureth by way of entry and feoffment; foꝛ if a Diſſeiſee releaſe to one of the diſſeiſors to ſome purpoſe, this ſhall enure by way of entry and feoffment, viz. as to hold out his companion. But as to a Rent-charge grant-

ted by him it ſhall not enure by way of entry and feoffment: for if the Diſſeiſee had entred and infeoffed him, the Rent-charge had been avoided. But it is a certain rule, that when the entry of a man is congeable, and he releaſeth to one that is in by title, (as hereto the Feoffee upon condition is) it ſhall never enure by way of entry and Feoffment, either to avoid a condition with which he accepted the Land charged, or his own grant, or to hold out his companion.

And where it appeareth by our Author that acts done by the Diſſeiſor ſhall not be avoided by the Releaſe of the Diſſeiſee; It is to be noted, that acts made to the Diſſeiſor himſelf ſhall not be avoided by the alteration of his Eſtate by the releaſe of the Diſſeiſee; as if the Lord before the Releaſe had confirmed the eſtate of the Diſſeiſor to hold by leſſer ſervices, the Diſſeiſor ſhall take advantage of it, and ſo of Eſtovers to be burnt in the houſe, and the like Law of a warranty made unto him.

If the heir of the Diſſeiſor endow his wife Ex aſſenſu patris, and the Diſſeiſee releaſe to the Diſſeiſor, he ſhall not avoid the endowment; for that is like the caſe put by Littleton of the Rent-charge.

If an Alien be a Diſſeiſor and obtaine Letters of Denization, and then the Diſſeiſee releaſe unto him; the King ſhall not have the land, for the releaſe hath altered the eſtate, and it is as it were a new purchaſe; otherwiſe it is if the Alien had been the Feoffee of the Diſſeiſor.

If the Lord diſſeiſe the Tenant, and is diſſeiſed, the Diſſeiſee releaſe to the ſecond Diſſeiſor, yet the Seigniory is not revived; for between the parties the Releaſe enures by way of Entry and feoffment as to the land; but not having regard to the Seigniory, and for that the poſſeſſion was never actually removed or reveſted from the Diſſeiſor, who claimeth under the Lord, the Seigniory is not revived. But if the Lord and a ſtranger diſſeiſe the Tenant, and the Diſſeiſee releaſe to the ſtranger, there the Seigniory by operation of Law is revived, for the whole is veſted in the ſtranger which never claimed under the Lord. And in that caſe, if the Lord had dyed, and the land had deſcended, the Seigniory had been revived. But if the Lord had diſſeiſed the Tenant, and been diſſeiſed by two, and the Diſſeiſee releaſed to one of them; the Seigniory is not revived, becauſe he claimed (as hath been ſaid) under the Lord.

Vide Sect. 514.

28 E. 3. 98. 9 E. 4. 46. 21 E. 4. 55. 41 E. 3. 10. 2 H. 4. 12.

Sect. 478.

¶ *Que briefe de eux il eſſiera, &c.* Note, many times in one caſe the Law doth give a man ſeveral remedies, and of ſeveral kinds, as in this caſe by action and by entry; by action, either a Writ of right, or Dum fuit infra ætatem.

¶ *Et puis le Diſſeiſor porta briefe de droit, &c.* Here it appeareth, that there is a great art and knowledge for a man that hath divers remedies to chuſe his apteſt remedy; as in this caſe, if he bring his Writ of right, the Diſſeiſor ſhall be barred; but if he had entred upon the heir of the Alienee, he ſhould have injoyed the land for ever. For in that caſe the heir of the Alienee after ſuch an Entry ſhall never have a Writ of right, no more then if the Diſſeiſee entreth upon the heir of the Diſſeiſor, and make a feoffment in fee, if the heir of the Diſſeiſee

¶ Item, ſi homme ſoit diſſeiſie per un enfant, le quel aliena en fee, & alienee deby ſeiſie, & ſon heire enter, eſteant le Diſſeiſor deins age, ore eſt en election le Diſſeiſor, d aver un briefe d dum fuit infra ætatem, ou briefe de droit, envers le heire de l' alienee, & quel briefe de eux que il eſſiera, il doiet recover per la ley, &c. Et auxy il poit enter en la terre ſans aſcun recoverie, & en ceſt caſe lentre l' Diſſeiſee eſt toll', &c. mes en ceſt cas ſi le diſſeiſee releſſa ſon droit al

Alſo, if a man be diſſeiſed by an infant, who alien in Fee, and the Alienee dyeth ſeiſed, and his heir entreth, the Diſſeiſor being within age; now is it in the election of the Diſſeiſor to have a Writ of *Dum fuit infra ætatem*, or a Writ of right againſt the heir of the Alienee; and which Writ of them he ſhall chuſe, he ought to recover by the Law, &c. And alſo he may enter into the Land without any recovery; and in this caſe the entry of the Diſſeiſee is taken away,

heire

heire del alienée, & puis le disseisor porta brē de dr̄t envers l' heir alienée, & il joyne le mise sur le mere droit, &c. le graunde assise doit trover per la ley que le tenant ad pluis mere droit que ad le Disseisor, &c. pur ceo que le Tenant ad le droit le disseisée per son release le quel est pluis ancient & pluis mere droit. Car per tiel leas tout le droit le Disseisée passa a le tenant, & est en le Tenant. Et a ceo que ascuns ont dit, que en tiel case lou home que ad droit al terres ou tenements (mes son entrie nest pas congeable) fil relessa al tenant tout son droit, &c. que tiel release n̄era per voy dextinguishment: Quant a ceo il poit estre dit, que ceo est voyer quant a celuy que relessa, car per son release il ad luy demise quietment de son droit, quant a son person, mes un̄re le droit que il a-doit bien poit passer a le tenant per son release: Car enconvenient serroit que tiel ancien droit serroit extinct tout oustement, &c. Car il est communement dit que

&c. But in this case if the disseisee release his right to the heir of the Alienee, and after the Disseisor bringeth a Writ of right against the Heir of the Alienee, and he joyn the mise upon the meere right, &c. the great assise ought to find by the law that the tenant hath more meer right then the Disseisor, &c. for that the tenant hath the right of the disseisee by his lease, the which is the most ancient & most meer right; for by such release all the right of the Disseisee passeth to the tenant, & is in the Tenant. And to this some have said, that in this case where a man which hath right to lands or tenements (but his entry is not congeable) if he release to the Tenant all the right, &c. that such release shall enure by way of extinguishment. As to this it may be said, that this is true, as to him which releaseth; for by his release he hath dismissed himself quite of his right as to his person; but yet the right which he hath may well passe to the Tenant by his release. For it should be inconvenient that such an ancient right should be extinct altogether, &c. for re-enter he shall detain the land for ever, and the Feoffee shall not maintain any Writ of right, for a bar right shall never be left in the Feoffee, but shall ever follow the possession, as hath been said; but if the Disseisee entreth upon the Heir of the Disseisor, and make a Feoffment in Fee upon condition, and entreth for the condition broken, before the heir of the Disseisor enter, he is restored to his right again. 38 E.3.16. 24 H.8. Restore al primer action 5. Vide Sect.447.

A man maketh a gift in tail, the remainder in Fee; tenant in tail dieth without issue, an estranger intrudes, and he in the remainder brings a Formedon, and recovereth by default, and maketh a Feoffment in fee, the Intruder reverse the recovery in a Writ of deseit and entreth, he shall detain the Land for ever, and the Feoffee shall not have a writ of right. 9 H.7.24.

And so likewise if a Disseisor die seised, and a stranger abate, and the Disseisee release to him, the heir of the Disseisor shall enter and detain the Land for ever. For the right to the possession shall draw the right of the land to it, and shall not leave a right in him to whom the release is made; as hath been said before in the 447. Section. 9 H.7.24.

¶ *Le droit del Disseisée passa al Tenants & est en le Tenant.* For saying the Tenant hath the whole Fee simple, he is capable of the whole right of the Disseisee, and as Littleton here saith, the right is in the Tenant.

¶ *Inconvenient serroit.* Here again, as hath been often observed, an argument Ab inconvenienti is forcible in Law, and that Judges, by the authority of our Author, are to judge of inconveniences, as of things unlawful, as hereby and Vide Sect.97.138.139. 231.269.440.728

by many other places it appeareth.

dꝛoit ne poit pas morier. it is commonly ſaid, that a right cannot die.

¶ *Un droit ne poit pas morier.* Dormit aliquando jus, moritur nunquam. Foꝛ of ſuch an high eſtimation is right in the eye of the Law, as the Law pꝛeſerveth it from death and deſtruction; trodden down it may be, but never trodden out. Foꝛ where it hath bæn ſaid, that a Releaſe of right doth in ſome caſes enure by way of extinguiſhment, it is ſo to be underſtood, either (as Littleton doth here) in reſpect of him that makes the Releaſe, oꝛ in reſpect that by conſtruction of Law it enureth not onely to him to whom it is made, but to others alſo who be eſtrangers to the Releaſe, which, as hath bæn ſaid, is a quality of an inheritance extinguiſhed.

14 H.8.6.b. As if there be Lord and Tenant, and the Tenant maketh a Leaſe foꝛ life, the remainder in fee, if the Lord releaſe to the Tenant foꝛ life, the Rent is wholly extinguiſhed, and he in the remainder ſhall take benefit thereof; even ſo when the Heir of a Diſſeiſoꝛ is diſſeiſed; and the Diſſeiſoꝛ make a leaſe foꝛ life, the remainder in fee, if the firſt Diſſeiſee releaſe to the Tenant foꝛ life, this is ſaid to enure by way of extinguiſhment; foꝛ that it ſhall enure to him in the remainder, who is a ſtranger to the Releaſe, and yet in truth the right is not extinct, but doth follow the poſſeſſion, viz. The Tenant foꝛ life hath it during his time, and he in the remainder to him and his heirs, and the right of inheritance is in him in the remainder; foꝛ a right to land cannot die oꝛ be extinct in Deed; and therefoꝛe if after the death of Tenant foꝛ life, the heir of the Diſſeiſoꝛ bring a Writ of right againſt him in the remainder, and he joyn the miſe upon the mær right, it ſhall be found foꝛ him, becauſe in judgment of Law he hath by the ſaid Releaſe the right of the firſt Diſſeiſee.

Sect. 479, 480.

14 H.8. fol.5.6. 11 H.7.25. 30 H.6. tit.bar 39. 38 E.3.10.

¶ HEre Littleton putteth a diverſity between Releaſes which enure by way of extinguiſhment againſt all perſons, and whereof all perſons may take advantage, and Releaſes which in reſpect of ſome perſons enure by way of extinguiſhment, and of other perſons by way of Mitter le droit. Oꝛ between Releaſes which in Deed enure by extinguiſhment; foꝛ that he to whom the Releaſe is made cannot have the thing releaſed; and Releaſes which having ſome quality of ſuch Releaſes are ſaid to enure by way of extinguiſhment, but in troth do not; foꝛ that he to whom the Releaſe is made may receive and take the things Releaſed. And here Littleton putteth caſes where Releaſes do abſolutely enure by extinguiſhment without exception, having reſpect to all perſons: and firſt of the Lord and Tenant. Secondly, of the Rent-charge. Thirdly, of the Common of Paſture.

First, of the Lord and Tenant: and the Lord releaſe to the Tenant his Seigniory,

¶ MEs Releaſes que enuera p voy dextinguiſhment envers touts perſons, ſont lou celuy a q̄ le releas eſt fait, ne poit aver ceo que a luy eſt releas. Sicome ſi ſoyent Sr̄ & Tenant, & le Sr̄ releſſa al tenant tout l'droit que il ad en la ſeigniozy, ou tout le dꝛoit q̄ il ad en le tre, &c. tiel releas va per voy de extinguiſhmēt envers touts perſōs, pur ceo que le tenant ne poit aver ſervice p pꝛender ō luy meſm̄.

BUt Releaſes which enure by way of extinguiſhment againſt all perſons, are where he to whom the releaſe is made, cannot have that which to him is releaſed. As if there be Lord & tenant, and the Lord releaſe to the tenant all the right which he hath in the Seigniory, or all the right which he hath in the Land, &c. this releaſe goeth by way of extinguiſhment againſt all perſons, becauſe that the Tenant cannot have ſervice to receive of himſelf.

Sect. 480.

¶ EN meſm̄ l'maner eſt de releas

IN the ſame manner is it of a Releaſe

leas fait al Tenant del terre de un Rent charge ou Common de paſture, &c. pur ceo que le Tenant ne poit aver ceo que a luy eſt releſſe, &c. iſſint tiels releales urera per extinguiſhmēt en touts voyes.

made to the Tenant of the land of a Rent-charge or common of paſture, &c. becauſe the Tenant cannot have that which to him is releaſed, &c. ſo ſuch releaſes ſhall enure by way of extinguiſhment in all ways.

this muſt of neceſſity enure by way of extinguiſhment to all men, for the Tenant cannot have ſervice to be taken of himſelf, nor one man can be both Lord and Tenant. The ſecond is of a Rent-charge, a man cannot have land and a Rent iſſuing out of the ſame land. Thirdly, a man cannot have land and a common of paſture iſſuing out of the ſame land, Et ſic de cæteris. For in all theſe caſes, and the like, he to whom the releaſe is made cannot have and enjoy the thing that is releaſed. But in the caſe of the right of the land, the Tenant of the land may take and enjoy it for ſtrengthning his eſtate therein.

The meine being a Feme entermarries with the Tenant peradaile, if the Lord releaſe to the Feme, the Seigniory onely is extinct; but if he releaſe to the husband, both Seigniory and meſnalty are extinct. And in this caſe, if the Lord releaſe to the husband and wife, it is a queſtion how the releaſe ſhall enure, but it is no queſtion but that a releaſe may be made to a meſnalty or a Seigniory ſuſpended in part of the eſtate.

But here obſerve a diverſity where a releaſe enureth by way of extinguiſhment of an inheritance, which is in poſſeſſion and may be granted over, and a releaſe of a right or an action to lands which cannot be granted over, (r) For the Lord may releaſe his Seigniory to the Tenant of the land for life or in tail, Et ſic de cæteris. But ſo cannot one releaſe a right or an action, for if he be releaſed but for an hour, it is extinct for ever, as hath been ſaid.

(r) 13 E.3. tit. Extinguiſhment. Brook 45. & tit. Voucher. F.120. 30 E.3.13. 19 H.6.19. 21 E.3.33. 38 Aſſ.17. 11 H.4. tit. Releaſe 21. 18 E.2. ibid.5. 36 H.8.5. 41 Aſſ.6.

And two things are to be obſerved here, firſt, that by releaſe of all the right in the Land the Seigniory is extinct, as well as by the releaſe of all the right in the Seigniory, for the Seigniory iſſueth out of the land. Secondly, that by the releaſe of all his right in the Seigniory or the land, the whole Seigniory is extinct without any words of inheritance. If the Tenancy be given to a Lord and to a ſtranger, and to the heirs of the ſtranger, the Lord releaſe to his companion all the right in the land, this releaſe doth not onely paſs his eſtate in the Tenancy, but extinguiſheth all his right in the Seigniory; and ſo one releaſe enures to extinguiſh ſeveral rights in one and the ſame land.

If there be Lord and Tenant by Fealty and Rent, the Lord granteth the Seigniory for years, and the Tenant attorneth, the Lord releaſeth his Seigniory to the Tenant for years, and to the Tenant of the land generally, the whole Seigniory is extinct, and the ſtate of the Leſſee alſo. But if the releaſe had been to them and their heirs, then the Leſſee had had the Inheritance of the one moiety, and the other moiety had been extinct. And the reaſon of this diverſity is, becauſe when the releaſe is made generally, it can enure to the Leſſee but for life, becauſe it enureth by way of enlargement of eſtate; and being made to the Tenant of the land it enureth by way of extinguiſhment, as Littleton here ſaith, and then there cannot remain a particular eſtate in the Seigniory for life. But when the releaſe is made to them, and their heirs, each one takes a moiety; the one by way of increaſing of the eſtate, and the other by extinguiſhment.

Sect. 481.

¶ Item de prover que le graund Aſſiſe doit paſſer pur le demandant en le caſe avauntdit, jeo aye oye ſovent la Lecture de Leſtatute

Alſo to prove that the grand Aſſiſe ought to paſſe for the demandant, in the caſe aforeſaid, I have often heard the reading of the Statute of *Weſt.* 2.

¶ *Jeo aye oye ſovent la Lecture de Weſt.* 2.

Here it is to be obſerved, of what authority ancient Lectures or readings upon Statutes were, for that they had five excellent qualities: Firſt, they declared what the Common Law was before the making

king of the Statute, as here it appeareth. Secondly, they opened the true ſenſe and meaning of the Statute. Thirdly, their caſes were briefe, having at the moſt one point at the Common Law, and another upon the Statute. Fourthly, Plain and Perſpicuous, for then the honour of the Reader was to excel others in authorities, arguments, and reaſons, for proof of his opinion, and for confutation of the objections againſt it. Fifthly, they read, to ſuppreſſe ſubtil inventions, to creep out of the Statute. But now readings having loſt the ſaid former qualities, have loſt alſo their former authorities; for now the caſes are long, obſcure, and intricate, full of new conceits, liker rather to Riddles then Lectures, which when they are opened, they vaniſh away like ſmoake; and the Readers are like to Lapwings, who ſeem to be neareſt their neſts when they are fartheſt from them, and all their ſtudy is to find nice evaſions out of the Statute. By the authority of Littleton, ancient Readings may be cited for proof of the Law, but new Readings have not that honour, for that they are ſo obſcure and darke.

de Weſtminſter ſecond, que commence, In caſu quo vir amiſerit per defaltam tenementum quod fuit jus uxoris ſuæ, &c. que a le Common Ley devant meſme Leſtatute, ſi leaſe ſoit fait a un home pur terme de vie, le remainder ouſter en Fée, & un eſtrange per feint Action uſt recover envers le Tenant a terme de vie per default, & puis le Tenant mozuſt, celuy en le remainder naveit aſcun remedy devant le Statute pur ceo que il naveit aſcun poſſeſſion del terre.

which begun thus: *In caſu quo vir amiſerit per defaltam tenementum quod fuit jus uxoris ſuæ, &c.* that at the Common Law before the ſaid Statute, if a leaſe were made to a man for term of life, the remainder over in fee, and a Stranger by feigned Action recovered againſt the Tenant for life by default, and after the tenant dieth, he in the remainder had no remedy before the Statute, becauſe he had not any poſſeſſion of the land.

¶ *Leſtatute de W.* 2. which is the third Chapter.

¶ *Le remainder ouſter en fee.* Here is to be obſerved, that although the Statute ſpeaketh of a Reverſion, (a) yet by the authority of Littleton, a remainder is within the Statute.

(a) 24 E.2.35. 28 E.3.96. 18 E.2. Entry 74. 3 E.2. Entry 7. 6 E.3. 24. 7 E.3. Entry 62. 7 E.3.54,55. 15 E 4.15. F.N.B.217. d. Regiſter 241.

Mæ the Statute of 14 E. cap. 8. which provideth fully for him in the remainder.

¶ *Feint action.* Feint is a Participle of the French word Feindre, which is to feign, or falſly pretend; ſo as a feint Action is a falſe Action.

¶ *Naveit aſcun remedy devant Leſtatute.* (b) Here it appeareth by Littleton, That if a man maketh a leaſe for life, the remainder in fee, and Tenant for life ſuffereth a recovery by default, that he in the remainder ſhould not have a Formedon by the Common Law: for Littleton ſaith, That he had not any remedy before the Statute. Neither is there any ſuch Writ in that caſe in the Regiſter, albeit in ſome Books mention is made of ſuch a Writ.

(b) W.2. cap.5. Vide 14 E.3. Formedon 31. 11 E.3. ibid.31. 8 E.3.59. F. N. B. 217. d. 7 H.7.13.

Sect. 482.

38 E.3.3. Tit. Juris utrum 1.

¶ THERE a Diſſeiſin gotten by wrong, and defeated by the entry of him that right hath, is ſufficient to maintain a Writ of right againſt the recoveror in this caſe; for albeit

¶ MEs ſi celuy en le remainder uſt enter ſur le Tenant a terme de vie, & luy diſſeiſiſt, & apres

BUt if he in the remainder had entred upon the Tenant for life, and diſſeiſed him, and after the Te-

le

le Tenant entra ſur luy; & apres le Tenãt a terme de vie per tiel recovery perde per default & moruſt, ore celuy en le remainder bien poet aver briefe de Droit envers celuy que recovera, pur ceo que le miſe ſerra joyñ ſolement ſur le mere droit, &c. Uncore en ceſt caſe, le ſeiſin de celuy en le remainder fuit defeat per entrie del terme a tenant de vie. Mes peradventure aſcuns voilent argue & dire, que il navera briefe ô Droit en ceſt caſe, pur ceo q̃ quant le miſe ẽ joyne, il eſt joyne ẽ tiel mañ, ſ. ſi le tenant ad plus mere droit en la terre en le manner come il tyent q̃ le demandant ad en le manner come il demanda & pur ceo que le ſeiſin del dõt fuit defeat per entry de le tenant a terme de vie, &c. donques il ad nul droit en le manner come il demaund.

nant enter upon him, and after the Tenant for life by ſuch recovery loſe by default and die, now he in the remainder may well have a Writ of Right againſt him which recovers, becauſe the Miſe ſhall be joyned only upon the mere right, &c. Yet in this caſe the Seiſin of him in the remainder was defeated by the entry of the Tenant for life. But peradventure ſome will argue & ſay, That he ſhall not have a writ of Right in this caſe, for that when the Miſe is joyned, it is joyned in this manner, (*ſcilicet*,) if the Tenant hath more mere right in the land in the manner as he holdeth, then the Demandant hath in the manner as he demandeth, and for that the ſeiſin of the Demandant was defeated by the entry of the Tenant for term of life, &c. then he hath no right in the manner as he demandeth.

the Seiſin is defeated betwæn the Leſſee for life, and him in the remainder, yet having regard to the recoveror, who is a mær ſtranger and hath no title, it is ſufficient againſt him. But otherwiſe it is againſt the party himſelf that defeated the Seiſin, and the Law is propenſe to give remedy to him that right hath. And where ſome have thought that there is no authority in Law to warrant Littletons opinion herein, they are greatly miſtaken, for Littleton hath good warrant for all that he hath written. 7 E.3. 62. 38 E.3. 37. Tit. Jur. utr. 1.

Lands are letten to A. for life, the remainder to B. for life, the remainder to the right heirs of A. A. dieth, B. entreth and dieth, a ſtranger intrudeth, the heir of A. ſhall have a Writ of right of the Seiſin with A. had as Tenant for life.

Lands are letten to A. and B. and to the Heir of A. A. dieth, a recovery is had againſt B. the Heir of A. ſhall have a Writ of right of the whole; for every Joyntenant is ſeiſed per my & per tout.

If lands be given in tail, the remainder to A. in Fee, the Donee dieth without Iſſue, his wife privement enſeint, A. entreth, the Iſſue is born and entreth upon him, and dieth without Iſſue, A. ſhall have a Writ of Right of the Seiſin which he had.

If lands be given in tail to A. the remainder to his right heirs, A. dieth without Iſſue, the collateral heir of A. ſhall have a Writ of Right of the ſeiſin of A. 4 E.3. 16. 17.

And ſo note a diverſity betwixt a Seiſin to cauſe poſſeſſio fratris, &c. for there is required a more actual ſeiſin, 40 E.3.8. 42 E.3.20. 37 Aſſ.4. 24 E.4.24.

and a Seiſin to maintain a Writ of Right. And hereby alſo are the (&c.) in this Section explained. 7 H.5.4. 11 H.4.14.

Sect. 483.

¶ A Ceo poit eſtre dit, q̃ ceux parols, (modo & forma prout, &c.) in mults des caſes ſont

TO this may be ſaid, that theſe words (*modo & forma prout, &c.*) in many caſes are words parols

parols de forme de pleder, & nemy parols de ſubſtance. Car ſi home port brief dentre In caſu Proviſo del alienation fait per le tenant en dower a ſon diſinheritance, & counta del alienation fait en fee, & le tenant dit, que il ne aliena pas en le manner come le demaundant ad declare, & ſur ceo ſount a iſſue, & trove eſt per verdict, que le tenant alienaſt en le taile, ou pur terme dauter vie, le demaundant recovera: uncore alienatiõ ne fuit en le manner come le demaundant avoit declare, &c.

of form of pleading, and not words of ſubſtance: for if a man bring a writ of entrie *In caſu Proviſo*, of the alienation made by the Tenant in Dower to his diſinheritance, and counteth of the alienation made in Fee, and the Tenant ſaith, that he did not alien in manner as the Demandant hath declared, and upon this they are at iſſue, and it is found by verdict, that the Tenant aliened in tail, or for term of another mans life, the Demandant ſhall recover, yet the alienation was not in manner as the Demandant hath declared, &c.

(c) 2 H.6.1. 40 E.4.35. 21 E.4.22.F.N.B.206. g. 40 E.3.5. 32 H.8. iſſue, Br. 80. Vid. Sect. ſequent.

¶ Where Modo & forma are of the ſubſtance of the iſſue, and where but words of form, this diverſity is to be obſerved. (c) where the iſſue taken goeth to the point of the Writ or Action, there Modo & forma are but words of form, as here in the caſe of the Writ of Entry, in caſu proviſo, and ſo is the (&c.) well explained in this Section. But otherwiſe it is, when a collateral point in pleading is traverſed; as if a feoffment be alledged by two, and this is traverſed Modo & forma, and it is found the Feoffment of one, there Modo & forma is material. So if a feoffment be pleaded by Deed, and it is traverſed Abſque hoc quod feoffavit Modo & Forma, upon this collateral Iſſue, Modo & Forma, are ſo eſſential, as the Jury cannot find a feoffment without Deed.

12 E. 4. 4.

Sect. 484.

Vide Sect. preced.

¶ *Trove eſt per verdict que il tient per fealtie, tantum.* Here is another diverſity to be obſerved, That albeit the iſſue be upon a Collateral point, yet if by the finding of part of the iſſue, it ſhall appear to the Court that no ſuch action lieth for the Plaintife no more then if the whole had been found, there Modo & Forma are but words of form, as here in the caſe which Littleton putteth of the Lord and Tenant, appeareth.

10 E.4.7. 8 E.4.15. 20 E.4.3. 21 E.4.3. Marlebr. cap. 3.

¶ *Car le matter del iſſue eſt la quel il tient de luy ou nemy, &c.*

Here it appeareth, that

¶ Autry ſi ſoyent Sñr & f, & le t̃ tient õl Sñr per fealtie ſolement, & le Sñr diſtreine le tenant pur rent, & le tenant porte briefe de Treſpaſs envers ſon Seignior de les avers iſſint priſes, & le Seignior plede que le tenant tient de luy per fealty & certein rent, & pur l'rent arere il bient a diſtreiner, &c. & demaunde judgement õ briefe port vers luy, Quare vi & armis, &c. & lauter dit que il ne tiẽt de luy en le manner come il ſuppoſe, & ſur

ALſo if there by Lord and Tenant, and the Tenant hold of the Lord by fealty only, and the Lord diſtrein the Tenant for rent, and the Tenant bringeth a Writ of Treſpaſs againſt his Lord for his cattel ſo taken, and the Lord plead that the Tenant holds of him by fealty and certain Rent, & for the Rent behind he came to diſtrein, &c. and demand judgement of the Writ brought againſt him, *Quare vi & armis*, &c. And the other ſaith, that he doth not

ceo

ceo ſont a iſſue, & trove eſt per verdict que il tient de luy per fealtie tantum, en ceſt caſe le briefe abatera, & uncore il ne tient ſ luy en le manner come le Seignior avoit dit. Car le matter del iſſue eſt, le quel le tenant tient de luy ou nemy; car ſil tient de luy, coment que le Seignior diſtreina le Tenant pur auter ſervices que ne doit aver, uncore tiel briefe de Treſpaſſe, Quare vi & armis, &c. ne giſt envers le Seigniour, mes ſerra abate.

hold of him in the manner, as he ſuppoſe, and upon this they are at iſſue, and it is found by verdict that he holdeth of him by fealty only. In this caſe the Writ ſhall abate, and yet he doth not hold of him in the manner as the Lord hath ſaid, for the matter of the Iſſue is whether the Tenant holdeth of him or no; for he holdeth of him, although that the Lord diſtrein the Tenant for other ſervices which he ought not to have, yet ſuch Writ of treſpaſs, *Quare vi & armis*, &c. doth not lie againſt the Lord, but ſhall abate.

if the matter of the iſſue be found it is ſufficient. And this rule holds in criminal cauſes. For if A. be appealed, or indicted of murther, viz. that he of malice prepenſed, killed I. A. pleadeth that he is not guilty modo & forma, yet the Jury may find the Defendant guilty of Man-ſlaughter without malice prepenſed, becauſe the killing of I. is the matter, and malice prepenſed is but a circumſtance. Pl. Com. 101.

In Aſſiſe of Darreine preſentment, if the Plaintiff alledge the avoidance of the Church by privation, and the Jury find the voidance by death, the Plaintiff ſhall have judgment, for the manner of voidance is not the title of the Plaintiff, but the voydance is the matter. 6 E.3.41.b. 25 E.3.30 9 H.7.3. 13 H.7.14. 29 E.3.38.

(d) If a Gardian of an Hoſpitall bring an Aſſiſe againſt the Ordinary, whereupon iſſue is taken, and it is found that he deprived him as Patron, the Ordinary ſhall have judgment, for the deprivation is the ſubſtance of the matter. (d) 8 E.3.70. 8 Aſſ.29. & 39. 9 E.3.338. 24 E.3.34. 5 H. 4.2. 7 H.4.11. Pl.Com.92. 3 Mar. Dyer 116. 40 E. 3. 35. Dyer 2. & 3. Ph. & Mar. 115. b. Trin. 22 Eliz. Rot.920. Wolmans caſe. 48 E.3.28. 34 Aſſ.3. 30 Aſſ.5. 41 E.3.28. 33 E.3. Verdict 47. 22 E.3.1.b. 18 E.3.48. 31 E.3. Account 58. 28 Aſſ. 48.

The Leſſee covenants with the Leſſor not to cut down any Trees, &c. and binds himſelf in a bond of forty pounds for performance of Covenants, the Leſſee cuts down ten trees, the Leſſor bringeth an Action of Debt upon the bond, and aſſigneth the breach that the Leſſee cutteth down twenty trees, whereupon iſſue is joyned, and the Jury find that the Leſſee cut down ten, judgment ſhall be given for the Plaintiff. For ſufficient matter of the iſſue is found for the Plaintiff.

Sect. 485.

¶ A Uxy en briefe de treſpaſs de batterie, ou des biens emports, ſi le defendant plede de rien culpable, en le maſi come le Plaintife ſuppoſe, & trove eſt que le Defendant eſt culpable en auter ville, ou a auter jour que le Plaintife ſuppoſe, uncore il recobera

ALſo in a Writ of Treſpaſs for battery, or for goods carried away, if the Defendant plead not guilty, in manner as the Plaintiff ſuppoſe, and it is found that the Defendant is guilty in another Town, or at another day then the Plaintiff ſuppoſe, yet he ſhall recover.

¶ *EN briefe de treſpaſſe de battery & des biens emports, &c.*

Here Littleton ſpeaketh of Actions brought for things tranſitory. In which caſes the wrong being done in one Town, the Plaintiff may not only alledge it in another Town, as Littleton here ſaith, but alſo in another County, and the Jurors upon not guilty pleaded are bound to find for the Plaintiff.

Neither can the aſſault, battery, or taking of goods, &c. alledged in another County, be traverſed without ſpecial cauſe

cauſe of juſtification which extendeth to ſome certain place; as if a Conſtable of a Town in another County arreſt the body of a man that breaketh the peace, there he may traverſe the County (but he muſt not reſt there) but all other places ſaving in the Town, whereof he is Conſtable. And ſo it is of taking of goods, if the Defendant juſtifie for damage feaſant in another County, he muſt traverſe as before. But where the cauſe of the juſtification is not reſtrained to a certain place, that is, ſo local as it cannot be alledged in any other Town, as in the caſes before alledged, and the like, then albeit the Action be brought in a forreign County, yet he muſt alledge his juſtification in the County where the Action is brought. As if a man be beaten in the County of Middleſex, and he bringeth his Action in the County of Buck. the Defendant cannot plead that the Plaintiff aſſaulted him in the County of Middl. &c. and traverſe the County, but he muſt plead his juſtification in the County of Buck. for that the cauſe of his juſtification is good in any place. And ſo it is in caſe of batement of goods, and other caſes for tranſitory things, as for example:

Et iſſint en pluſors auters caſes, ceux parols S. en le maner come le demandant ou l' plaintife ad ſuppoſe, ne font aſcun matter de ſubſtance del iſſue. Car en briefe de droit, ou le miſe eſt joyne ſur le mere droit, il eſt a tant a dire, & a tiel effect, S. le quel ad pluis mere droit, le tenant ou le demaundant al choſe en demaund.

And ſo in many other caſes theſe words, s. in manner as the Demandant or the Plaintiff hath ſuppoſed, do not make any matter of ſubſtance of the iſſue: for in a Writ of right, where the miſe is joyned upon the meer right, that is as much to ſay, and to ſuch effect, *viz.* whether the Tenant or Demandant hath more meer right to the thing in demand.

Trin. 30 Eliz. in the King's Bench, between Ingelebert and Jones. And herewith agreeth a Judgment in the Court of Common Pleas. Paſch. 38 Eliz. Rot. 1656.

In an action upon the caſe the Plaintiff declared for ſpeaking of ſlanderous words which is tranſitory, and laid the words to be ſpoken in London, the Defendant pleaded a concord for ſpeaking of words in all the Counties of England, ſaving in London, and traverſed the ſpeaking of the words in London: the Plaintiff in his replication denied the concord, whereupon the Defendant demurred, and judgment was given for the Plaintiff. For the Court ſaid, that if the concord in that caſe ſhould not be traverſed, it would follow, that by a new and ſubtile invention of pleading an ancient principle in Law (that for tranſitory cauſes of action the Plaintiff might alledge the ſame in what place or County he would) ſhould be ſubverted, which ought not to be ſuffered; and therefore the Judges of both Courts allowed a traverſe upon a traverſe in that caſe. And the wiſdome of the Judges and Sages of the Law hath always ſuppreſſed new and ſubtile inventions in derogation of the Common Law. And therefore the Judges ſay in one book, (c) we will not change the Law which always hath been uſed. And another ſaith, (f) it is better that it be turned to a default, then the Law ſhould be changed, or any innovation made.

A man did grant a Rent with a new invented clauſe of Diſtreſs, viz. That the Grantee ſhould hold the diſtreſs againſt gages and pledges, and yet by the whole Court he ſhall gage deliverance, for otherwiſe by this new invention all Replevin ſhall be taken away.

(*) See many other new inventions in derogation of the Common Law, diſallowed by the Judges, and by the Court of Parliament.

(h) Where the Jury is bound to find as well local things, in many caſes, as tranſitory in other Counties; ſee at large in my Reports.

By this which hath been ſaid, you ſhall know the Law as it is now in uſe in theſe caſes, and the better underſtand our (i) books when you ſhall read them, concerning as well local as tranſitory things, wherein you ſhall find great variety of opinions in our books.

¶ *Et le Defendant plead de rien culpable.* This is a good iſſue, if the Defendant committed no battery at all; but regularly by the Common Law, if the Defendant hath cauſe of juſtification or excuſe, then can he not plead not guilty, for then upon the evidence it ſhall be found againſt him, for that he confeſſeth the battery, and upon that iſſue cannot juſtifie it, but he muſt plead the ſpecial matter, and confeſs and juſtifie the battery.

The like Law is in other caſes, and therefore this is a learning neceſſary to be known, for that the loſſe of moſt cauſes dependeth thereupon. As if in battery the Defendant may juſtifie the ſame to be done of the Plaintiffs own aſſault, he muſt plead it ſpecially, and muſt not plead the general iſſue, and ſo of the like. In treſpaſs of breaking his Cloſe, upon not guilty he

(c) 38 E. 3. 1.
(f) 2 H. 4. 18.
31 E. 3. Gager delivery 5.
(g) 42 Aſſ. 12. 4 E. 3. cap. 3. 18 E. 3. cap. 2. & cap 6. 4 H. 4. cap. 2.
(h) Lib. 6. fol. 46, 47. Dowdales caſe 3 E. 3. Aſſ 446. 27 E. 3. 86. 1 Aſſ. 16. 3 Aſſ. 4. 6 Aſſ. 4. 5 Aſſ. 7. 18 E 3 38. 21 Aſſ. 8. 29 Aſſ. 5. 44 E. 3. 6. b. 14 H. 8. 4. 35. 5 H. 5. 2. 10 H. 6. 13. 21 H. 6. 31. 37 H. 6. 2. 7 E. 4. 45. 18 E. 4. 1. 22 E. 4. 19. 13 H. 7. 17. 2. Mar. Br. attaint. 104. 10 Eliz. Dyer 171.
(i) 19 H. 6. 48. 11 H. 6. 16. 43 E. 3. 23. b. 46 E. 3. 2. 9 H. 6. 62. 21 H. 6. 27. 14 H. 8. 24. 18 E. 4. 1. 20 H. 6. 2. 34 H. 6. 42. 14 H. 6. 21. 22. 4 H. 6. 13. 33 H. 6. 25. 12 E. 4. 12. 28 H. 8. Dyer 29. 21 E. 4. 19 80. 27 H. 8. 19. 12 H. 8. 1. 11 H. 4. 65. 19 H. 8. 6.

he cannot give in evidence, that the beaſts came through the Plaintiffs hedge, which he ought to 25 H. 8. Br.
hap, nor upon the general iſſue juſtifie by reaſon of a Rent-charge, common or the like.

In detinue the Defendant pleaderh non detinet, he cannot give in evidence, that the goods 22 H. 6. 33.
were pawned to him for money, and that it is not payd, but muſt plead it; but he may give in evidence a gift from the Plaintiff, for that proveth, he detaineth not the Plaintiffs goods.

(d) So in an action of waſte, upon the plea Nul waſt fait, he may give in evidence any (d) 12 H. 8 1. 19 F. 3. waſt 30. 20 E. 3. waſt. 321.
thing that proveth it not waſte, as by tempeſt, by lightning, by enemies, and the like; but he (e) 10 El. Dyer 276. 2. Mar. Dyer 212.
cannot give in evidence juſtifiable waſte, as to repair the houſe, or the like. (e) If one doth waſte, and before the action brought the Leſſee repaireth it, and after the Leſſor bringeth an action of waſte, and the Leſſee plead Quod non fecit vaſtum, he cannot give in evidence the eſpecial matter.

If two men be bound in a bond jointly, and the one is ſued alone, he may plead this matter in an abatement of the Writ, but he cannot plead Non eſt factum, for it is his Deed, though it be not his ſole Deed. (f) See in Whelpdales caſe, where a man may ſafely plead Non eſt factum, and where not, and the former books that treat of that matter well reconciled. (f) Lib. 5. f. 119. Whelpdales caſe. 7 E. 4. 3. 7 E. 6. Br. Non eſt fact. 14. 1 H. 7. 15 14 H 8. 28. Pl. Com. Dive & Man. caſe. 36 H. 8. Dyer 59. 2. Mar. Dict. 112. 1. El. Dier. 167.

(g) Upon Plene adminiſtravit pleded by an Executor, Et iſſint reins inter maines, if it be proved that he hath goods in his hands which were the Teſtators, he may give in evidence that he hath paid to that value of his own money, and need not plead it ſpecially. (g) Hill. 10 H. 8. Rot. 323. in Com. Banco. Et Mich. 6 E. 6 in Com. Banco. Bendoes. 7 H. 5. 9. 8 H. 7. 10. 34 E. 3. Droit. 29. 9 E. 3. 32. 8 E. 3. 24. 33 E. 3. Verd. 18 H. 6. 24. 39 H. 6. 28. 18 E. 3. 19. Pl. Com. 81. 173. 21 H. 7. 76. 16 Keilw. 21 E. 4. 11. 22 E. 4. 45. 13 H. 7. 13. Stanf. Pl. Cor. 13. 22 Aſſ. 55. 37. H. 6. 21.

In an Aſſiſe, if the Tenant plead Nul tort, nul diſſeiſin, he cannot give in evidence a releaſe after the Diſſeiſin, but a releaſe before the Diſſeiſin he may, for then there is no Diſſeiſin upon the matter.

In a Writ of Right, if the Tenant joyn the Miſe upon the meer right, he cannot give in evidence a collateral warranty, for he hath not any right by it; and therefore it ought to have been pleaded.

Of this learning you ſhall read plentifully in our books, and in my Reports. This little taſte ſhall here ſuffice, to make the Reader capable of the reſt. Regularly, whenſoever a man doth any thing by force of a warrant or authority, he muſt plead it.

But all that hath been ſaid muſt be under two cautions. Firſt, that whenſoever a man cannot have advantage of the ſpecial matter by way of pleading, there he ſhall take advantage of it in the evidence. For example, the rule of Law is, that a man cannot juſtifie in the killing or death of a man; and therefore in that caſe, he ſhall be received to give the eſpecial matter in evidence; as that it was Se defendendo, or in defence of his houſe in the night againſt thieves and robbers, or the like.

Secondly, that in any action upon the caſe, Treſpaſs, Battery, or of falſe impriſonment 7 Ja. ca. 5.
againſt any Juſtice of Peace, Mayor, or Bailiff of City or Town Corporate, Headborough, Port-reve, Conſtable, Tithingman, Collector of Subſidy or Fifteen, in any his Majeſties Courts in Weſtminſter, or elſewhere, concerning any thing by any of them done by reaſon of any their offices aforeſaid, and all other in their aid or aſſiſtance, or by their commandment, they may plead the general iſſue, and give the ſpecial matter for their excuſe or Juſtification, in evidence.

In an Action of Treſpaſs or other ſuit againſt any perſon for taking of any diſtreſs, or 23 H. 8. ca. 5.
other act doing by force of the Commiſſion of Sewers, the defendant in any ſuch Action ſhall and may make an Avowry, Conuſance, or Juſtification generall, that it was done by authority of the Commiſſion of Sewers, for Lot or Tax aſſeſſed by that Commiſſion, &c. and the Plaintiff ſhall reply he did it of his own wrong without ſuch cauſe. And both theſe acts were made for avoiding of prolixity and captiouſneſs of pleading, tending to the great charge and danger of Officers and Miniſters of Juſtice, &c. Evidence. *Evidentia*, This word in legal underſtanding doth not only contain matters of Record, as Letters Patents, Fines, Recoveries, Inrolments, and the like, and writings under Seal, and Charters and Deeds, and other writings without Seal, as Court Rolls, Accounts, and the like, which are called Evidences, Inſtruments; but in a larger ſenſe it containeth alſo Teſtimonia, the Teſtimony of witneſſes, and other proofs to be produced and given to a Jury, for the finding of any iſſue joyned between the parties. And it is called evidence, becauſe thereby the point in Iſſue is to be made evident to the Jury. Probationes debent eſſe evidentes, (id eſt) perſpicuæ & faciles intelligi. But let us now return to Littleton.

¶ *Ou a auter jour que le Plaintiff ſuppoſe.* (g) As if the Treſpaſs were done (g) 19 H. 6. 47. 5 E. 4. 5. 21 E. 4. 66.
the fourth of May, and the Plaintiff alledgeth the ſame to be done the fifth of May, or the firſt of May, when no treſpaſs was done; yet if upon the evidence it falleth out, that the Treſpaſs was done before the Action brought, it ſufficeth: and this is warranted by Littleton, who ſpeaketh indefinitely, that the Jury may find the Defendant guilty at another day than the Plaintiff ſuppoſeth.

¶ *Et a tiel effect.* Here is to be obſerved, That the Law of England reſpecteth the

effect and ſubſtance of the matter, and not every nicety or form of circumſtance: Qui hæret in literâ, hæret in cortice; & apices juris non ſunt jura.

Sect. 486.

¶ ITem, ſi home ſoit diſſeiſie, & le Diſſeiſor devie ſeiſie, &c. & ſon fits & heire eſt eins per diſcent, & le Diſſeiſée enter ſur heire Diſſeiſor, le quel entrie eſt un diſſeiſin, &c. ſi heire port Aſſiſe ou Briefe de Entre en nature de Aſſiſe, il recovera.

ALſo, if a man be diſſeiſed, and the diſſeiſor dieth ſeiſed, &c. and his ſon and heir is in by diſcent, and the Diſſeiſee enter upon the heir of the Diſſeiſor, which entrie is a Diſſeiſin, &c. if the heir bring an Aſſiſe or a Writ of Entrie in nature of an Aſſiſe, he ſhall recover.

¶ AND the reaſon hereof is, for that in the Writ of Right mentioned in the next Section, the charge of the grand Aſſiſe upon their Oath is upon the meer right, and not upon the poſſeſſion.

Sect. 487.

¶ CAR *ſi le heire le Diſſeiſor, &c.* Here is a diverſity to be obſerved concerning that which hath been ſaid, when the poſſeſſion ſhall draw the right of the land to it, and when not. And therefore when the poſſeſſion is firſt, and then a right cometh thereunto, the entry of him that hath right to the poſſeſſion ſhall gain alſo the right, which, as before it appeareth in thoſe caſes there put, followeth the poſſeſſion, and the right of poſſeſſion draweth the right unto it; but when the right is firſt, and then the poſſeſſion cometh to the right, albeit the poſſeſſion be defeated, (as here in Littletons caſe it is by the heir of the Diſſeiſor) yet the right of the Diſſeiſée remaineth.

50 E. 3. 7.

Vide Sect. 447.

¶ *Briefe Dentrie en le Per.* A. dyeth ſeiſed, and the Land deſcendeth to B. his ſon, before he entreth, an ſtranger abateth and dyeth ſeiſed, B. entreth, againſt whom the heir of the Abator recovereth in an Aſſiſe. B. may have a Writ of Mort-

1 Aſſ. 5. 10 Aſſ. 16.

¶ MEs ſi heir port briefe de droit envers le Diſſeiſée, il ſerra barre, pur ceo que quant le grand Aſſiſe eſt jure, lour ſerement eſt ſur le mere droit, & nemy ſur le poſſeſſion. Car ſi heire le diſſeiſor ſuiſt un Aſſiſe de Novel diſſeiſin, ou briefe Dentre en nature daſſiſe, & recoveraſt vers le Diſſeiſée, & ſuiſt execution, unore poit le Diſſeiſée aver briefe Dentre en le Per envers luy, de le diſſeiſin fait a luy per ſon pere, ou il poit aver envers heire briefe de droit.

BUt if the heire bring a Writ of Right againſt the Diſſeiſee, he ſhall be barred, for that when the grand Aſſiſe is ſworn, their Oath is upon the meer right, and not upon the poſſeſſion: For if the Heire of the Diſſeiſor ſue an Aſſiſe of *Novel Diſſeiſin*, or a Writ of *Entrie* in nature of an Aſſiſe, and recovers againſt the Diſſeiſee, and ſueth execution, yet may the Diſſeiſee have a Writ of *Entrie* in the *Per* againſt him, for the Diſſeiſin made to him by his Father; or he may have againſt the heir a Writ of Right.

anceſtor

anceſtor, and recover the land againſt him: And if the Diſſeiſin had been done to A. &c. then after the recovery in the Aſſiſe, B. ſhould have had a Writ of Entrie in the Per, becauſe the heir that is in by deſcent is in the Per.

Sect. 488.

¶ MES ſil le heire doit recover envers le Diſſeiſée en le caſe avantdit, per bée de Droit, donques tout ſon droit ſerroit clerement ale, pur ceo que judgement final ſerroit done envers luy, que ſerroit encounter reaſon lou le Diſſeiſée ad le pluis meere droit, &c.

BUT if the Heir ought to recover againſt the Diſſeiſee in the caſe aforeſaid by a Writ of right, then all his right ſhould be clearly taken away, for that judgment final ſhall be given againſt him, which ſhould be againſt reaſon where the Diſſeiſee hath the more meer right.

¶ *Judgement final.* The form whereof you ſhall ſee in the laſt Section of this Chapter. Vid. Sect. 87, &c.

¶ *Que ſerra encounter reaſon.* Argumentum ab inconvenienti.

Sect. 489.

¶ ET ſachez, mon fits, que en briefe de Droit apres ceo q̄ les quater chivaliers ont eſlie le grand Aſſiſe, donques il nad pluis greinder delay que en un briefe de Formedon, apres ceo q̄ le parties ſont a iſſue, &c. & ſi le miſe ſoit joyn ſur le Battaile, donques il ad meinꝺ delay.

AND know (my ſon) that in a Writ of Right, after the four Knights have choſen the grand Aſſiſe, then he hath no greater delay then in a Writ of *Formedon*, after the parties be at iſſue, &c. And if the Miſe be joyned upon Battail, then he hath leſſer delay.

¶ *Battaile.* See for this word in the laſt Section of this Chapter.

¶ *Iſſue, &c.* Or Demurrer, which is an Iſſue in Law.

Sect. 490, & 491.

¶ ITem, releaſe ꝺ tout l'droit, &c. en aſcun caſe eſt bone, fait a celuy que eſt ſuppoſe tenāt en Ley, coment que il nad riens en les Tenements. Sicome en Præcipe quod reddat, ſi le Tenāt aliena la terre pendant le briefe, & puis le demaundant releſſa a

ALſo, a releaſe of all the right, &c. in ſome caſe is good, made to him which is ſuppoſed Tenant in Law, albeit he hath nothing in the Tenements. As in a *Præcipe quod reddat*, if the Tenant alien the Land, hanging the Writ, and after the Demandant releaſeth

ſuy tout ſon droit, &c. cel releaſe eſt bone, pur ceo que il eſt ſuppoſe deſtre Tenant per le ſuit del Demandant, & uncore il nad riens en la Terre al temps de Releaſe fait.

to him all his right, &c. this Releaſe is good, for that he is ſuppoſed to be Tenant by the ſuit of the Demandant, and yet he hath nothing in the land at the time of the Releaſe made.

Sect. 491.

¶ EN meſme le manner eſt. ſi en Precipe quod reddat, le Tenant vouche & le Vouchée enᵉ en le Garrantie, ſi apres le Demandant releſſa al Vouchée tout ſon droit, ceo eſt aſſets bone, pur ceo que l'Vouchée, apres ceo que il avoit enter en le Garrantie, eſt Tenant en Ley al Demandant, &c.

IN the ſame manner it is in a *Præcipe quod reddat*, the Tenant vouch, and the Vouchee enters into warranty, if afterward the Demandant releaſe to the Vouchee all his right, this is good enough, for that the Vouchee after that he hath entred into Warranty is Tenant in Law to the Demandant, &c.

¶ HEre it doth appear, That there is a Tenant in Deed, and a Tenant in Law; and Littleton in this and the next Section putteth the examples of Tenants in Law, viz. (h) the Tenant to a Præcipe after alienation, and of the Vouchée, whereof ſomewhat hath been ſaid before.

(h) 10. 4 E.13. 12 Aſſ.41. 22 Aſſ.13. 23 E.3.21. 25 E.3.40. 38 E.3.10.11. 7 E.3.6. 19 E.3.tit. Reſceit 34 E.3. tit. Reſceit 9 E.4.16. 30 H.6.40. 17 Aſſ.24. 8 H.7.5. 20 Aſſ.2. 14 E.3. procedendo,4. 9 E.3.17. 32 E.3. quare Imp.2. Dyer, 17 Eliz.341. Sect. 447. * Vid. devant Sect. 447.

And it is obſervable that Littleton ſaith, That in both caſes he is Tenant in Law to the Demandant; and yet he hath nothing in the Land. And therefore if after the Vouchee hath entred into warranty and become Tenant in Law, an Anceſtor collateral of the Demandant releaſeth to the Vouchee with warranty, he ſhall not plead this againſt the Demandant; for that the Releaſe by the Eſtranger is void, which beſides the Authorities before vouched: appeareth by Littleton himſelf; * for he ſaith, That he is Tenant in Law to the Demandant, whereby he excludeth, that he is Tenant in reſpect of any Eſtranger.

Sect. 492.

Glanvil li.1. ca.1. Bract. li.3.fo.101. Brit.f.71. Flet. lib.1. cap.15. & 16.

¶ NOta, there be two kind of Actions, viz. one that concerns the Pleas of the Crown, Placita Coronæ, or Placita Criminalia; another that concerns Common Pleas, Placita Communia ſeu Civilia. Of that which concerneth Pleas of the Crown, Littleton ſpeaketh hereafter in this Chapter. Of Actions concerning Common Pleas, Littleton ſpeaketh in this place. And theſe are threefold, (that is to ſay) Real, Perſonal, and Mixt. Placitorum aliud perſonale, aliud reale, aliud mixtum. Or Actionum quædam ſunt in

Mir.2. Sect.1. Bract. ub. ſup. Flet. lib.1.ca. 1.

¶ ITem, quant al Releales dactions reals & perſonals, il eſt iſſint que aſcuns actions ſont mixt en le realty & en le perſonaltie, ſicome un action de Waſte ſue enders tenant a terme de vie, ceſt action eſt en le realty pur ceo que le lieu Waſte ſerra recover. Et auxy en le

ALſo, as to Releaſes of Actions Reals and Perſonals, it is thus. Some Actions are mixt in the realty, and in the perſonalty, as an action of waſte ſued againſt Tenant for life, This action is in the Realty, becauſe the place waſted ſhall be recovered; and alſo in the Perſonalty, becauſe

per-

perſonalty, pur ceo que treble damages ſerront recovers per le tortious Waſt fait per le Tenant, & pur ceo en ceſt action, un releas d'actions reals en bon plee en barre, & iſſint eſt un releas d'actions perſonals.

treble damages ſhall be recovered for the wrongfull waſte done by the Tenant; And therefore in this action a releaſe of actions reals is a good plea in bar; and ſo is a Releaſe of actions perſonals.

Rem, quædam in Perſonam, & quædam mixtæ. And generally, Actio is defined. (i) Actio nihil aliud eſt quam jus proſequendi in judicio quod ſibi debetur. Or Action neſt auter choſe que loyal demande de ſon droit.

(i) Vide Sect. 444. Bract. lib. 3. fol. 98. Fleta lib. 1. cap. 15. Mirror cap. 2. Sect. 1.

(k) And by the releaſe of all Actions, cauſes of action be releaſed; but within a ſubmiſſion of all actions to arbitrement, cauſes of action are not contained.

(k) Lib. 8. 113. Altham's caſe. 39 H. 8. Dier. 57. 5 Mar. 217. Vide 36 H. 6. 8. Vide 42 E. 3. 22, 23.

¶ *Tenant pur vie.*

And ſo it is if it be brought againſt Tenant for years, becauſe it agreeth with the reaſon of Littleton here rendred, viz. that the place waſted ſhall be recovered; and therefore ſoundeth in the realty.

¶ *Auxy en le perſonaltie pur ceo que treble damages ſerra recovers*, which do ſound in the perſonalty. Wherefore Littleton concludeth, that in an action mixt, a releaſe of all actions reals is a good bar, and ſo is a releaſe of all actions perſonals.

And here is to be obſerved a diverſity between the act of the party and an act in Law; for a man by his own act cannot alter the nature of his action; and therefore if the Leſſee for life or Leſſee for years do waſte, now is an action of waſte given to the Leſſor, wherein he ſhall recover two things, viz. the place waſted, and treble damages; in this caſe if the Leſſor releaſe all actions reals, he ſhall not have an Action of Waſte in the perſonalty onely. And if he releaſe all Actions perſonals, he ſhall not have an action of waſte in the realty onely.

(l) And ſo it is if the Leſſee doth waſte, and after ſurrendreth to the Leſſor his eſtate, and the Leſſor accept thereof, the Leſſor ſhall have an action of Waſte.

(l) 19 H. 6. 66. 14 H. 6. 14. 11 R. 2. Waſt. 99. 14 H. 14.

But by an act in Law the nature of the action may be changed; as if a man make a Leaſe pur terme dauter vie, and the Leſſee doth waſte; and then Ceſtuy que vie dieth, an Action of Waſte ſhall lye for damages onely, becauſe the other is determined by act in Law.

23 H. 8. Br. Waſt.

And again, hereupon is another diverſity to be obſerved, that in caſe when an action is well begun, and part of the Action determined by Act in Law, and yet the like action for the reſidue is given, there the Writ ſhall not abate, but proceed. But where by the determination of part the like action remaineth not for the reſidue, there the action well commenced ſhall abate. As if an action of Waſte be brought againſt Tenant pur terme dauter vie, and hanging the Writ, Ceſtuy que vie dieth, the Writ ſhall not abate, but the Plaintiff ſhall recover damages only; becauſe if Ceſtuy que vie had died before any action brought, the Leſſor might have an action of Waſte for the damages: So if an Ejectione firmæ be brought, and the Term incureth hanging the Action; yet the action ſhall proceed for damages onely, becauſe an Ejectione doth lie after the Term for damages onely. But if Tenant pur auter vie bring an Aſſiſe, and Ceſtuy que vie dieth, hanging the Writ, albeit the Writ were well commenced; yet the Writ ſhall abate, becauſe no Aſſiſe can be maintainable for damages onely.

11 H. 6. 43. 9 E. 4. 50. 24 E. 3. 72. 18 E. 3. 28. 9 H. 6. 30.

So if an Action of Waſte be brought by Baron and Feme in remainder, in eſpecial taile, and hanging the Writ, the wife dieth without iſſue, the Writ ſhall abate, becauſe every kind of Action of Waſte muſt be ad exhæredationem.

2 H. 4. 22. 6 E. 2. briefe 817.

If a Writ of Annuity be brought, and the Annuity determineth hanging the Writ, the Writ faileth for ever; becauſe no like Action can be maintained for the Arrerages onely, but for the Annuity and Arrerages.

34 H. 6. 10. 9 E. 4. 39. 14 H. 7. 31. 18 E. 3. Scire facias 10.

But where damages onely are to be recovered, there albeit by act in Law the like action lieth not afterwards, yet the action well commenced ſhall proceed; (m) as if a Conſpiracy be brought againſt two, and one of them dieth, hanging the Writ, it ſhall proceed.

(m) 22 R. 2. briefe 858. 18 E. 4. 1.

And in an Aſſiſe of Novel diſſeiſin, a Writ of Annuity, Quare impedit, and other mixt actions, a releaſe of actions reals is a good Plea; and ſo it is of a releaſe of actions perſonals.

2 H. 4. 23. 9 H. 6. 37.

But if three Joyntenants be diſſeiſed, and they arraign an Aſſiſe, and one of them releaſe to the Diſſeiſor all actions perſonals, this ſhall bar him, but it ſhall not bar the other Plaintiff; for having regard to them the realty ſhall be preferred, & omne majus trahit ad ſe minus dignum. (n) And in a Writ of Ward brought by two, the releaſe of the one ſhall not grieve the other, but ſhall enure to his benefit; for he ſhall recover the whole Ward, and hold his companion out.

30 H. 6. Bar. 59.

(n) 30 H. 6. ubi ſuprà. 45 E. 3. fol. 6. 18 E. 3. fol. 56. 21 H. 6. 18. 2.

But here a diverſity is to be obſerved between real actions, wherein damages are to be recō-

recovered at the Common Law, as in an Aſſiſe, &c. and real actions where damages are not to be recovered by the Common Law; but are given by the (o) Statute; for there a releaſe of all actions perſonals is no bar, as in the Writ of Dower, Entrie ſur diſſeiſin in le per, &c. Mordanc', Aiel, &c.

(o) Merton cap. 1. in dower. Glouc. cap. 1.

Sect. 493.

¶ ET en Quare impedit, un releas dactions perſonals eſt bone plée, & iſſint eſt un releaſe dactions reals, Per Martin, Qd. fuit conceſſium. Hill. 9 H.6.57.

AND in a *Quare impedit*, a releaſe of actions perſonals is a good plea, and ſo is a releaſe of actions reals, *Per Martin, Quod fuit conceſſum. Hill. 9 H.6. fol.57.*

9 H.6.57. 22 H.6.27.b.

¶ THis is an addition to Littleton, which although it be Law, and the Book truly cited, yet I paſs it over. But yet note by the way, That a releaſe of actions perſonals is alſo a good bar in a Quare impedit, becauſe it is an action mixt.

Sect. 494.

¶ LE *diſſeiſee bien poit pleder, &c.* Nota, every man ſhall plead ſuch Pleas as are proper for him, and apt for his defence to be pleaded. (q) As a diſſeiſor that hath nothing in the land may plead a releaſe of Actions perſonals, becauſe damages are to be recovered againſt him; and therefore for his defence he may plead it, but a releaſe of actions reals he cannot plead, becauſe he hath no eſtate in the land; and none ſhall plead a releaſe of Actions reals in an Aſſiſe, but the tenant of the Land. Et ſic de cæteris. But the Tenant in an Aſſiſe ſhall plead a releaſe of Actions perſonals to the Diſſeiſor, for that Plea proveth that the Plaintiff hath no cauſe of action againſt him.

(q) 11 Aſſ.9. 18 E.3.2.23,24. 31 E.3. quare Imp. 161. 7 E.3.5. 9 E.3. 6. 39 E.3.30. 22 E.3.2. 13 H.4.7. 3 E.2. quare Imp.44. 38 E.3.30,31. 5 E.3.26. 21 E.3.16,17. 5 H.7.34.8 H.5.14.22 H.6.28. 26. 1 H.7.34. 27 E.3.81. 32 H.6.15. b. 17 Aſſ.25. 2 H.7.14. 13 H.8.13,14. 44 E.3.12. 46 E.3.13. 16 E.4.11. 24 E.3.34. 4 E.4.18. 7 H.4.34. 2 R.3. encumbent 4. 33 E.3. quare Imp.194.

13 E.4.2.a.

¶ EN meſme le maner eſt en aſſiſe de Novel diſſeiſin, pur ceo que il eſt mixt en le realtie, & en le perſonalty. Mes ſi un tiel aſſ. ſoit arraigne enter le diſſeiſor & le tenant, le diſſeiſor bien poit plede un releas dactions perſonals, pur barrer laſſ. mes nemy un releas dactions reals, car nul pledera releas dactions reals en aſſ. forſque le tenant.

IN the ſame manner it is in an Aſſiſe of *Novel diſſeiſin*, for that it is mixt in the realty and in the perſonalty; but if ſuch an Aſſiſe be arraigned againſt the Diſſeiſor, and the Tenant the Diſſeiſor may well plead a releaſe of actions perſonals to bar the Aſſiſe; but not a releaſe of actions reals; for none ſhall plead a Releaſe of Actions reals in an Aſſiſe, but the tenant.

If the Diſſeiſee releaſe to the Diſſeiſor all actions reals, and the diſſeiſor maketh a feoffment in Fee, and an Aſſiſe is brought againſt them, the Feoffee ſhall not plead the releaſe to the Diſſeiſor; for that he is not privy to the releaſe; for a releaſe of actions ſhall only extend to Privies.

If a Diſſeiſor make a leaſe for life, the remainder in fee, and the diſſeiſee releaſe all actions to the Tenant for life, after the death of Tenant for life, he in the remainder ſhall not plead the ſaid releaſe.

If the Diſſeiſee releaſe all actions to the Diſſeiſor, and die, this doth bar him but for his life; for after his deceaſe his heir ſhall have an action (r) as ſome have ſaid. And hereby may appear a manifeſt diverſity between a releaſe of a Right, and a releaſe of actions.

(r) 19 H.6.23.a.

Sect.

Sect. 495.

¶ ITem, en tiels actions reals que covient deſtre ſue envers le Tenant del Franktenement, ſi le Tenant ad un releas dactions reals del demandant fait a luy devant le briefe purchace, & il plede ceo, il eſt bon plée pur le demandant adire, que celuy que pleda le plée navoit rien en le Franktenement al temps del releas fait, car adonque il navoit cauſe daver aſcun action real envers luy.

ALſo, in ſuch Actions Reals which ought to be ſued againſt the tenant of the Freehold, if the tenant hath a releaſe of Actions Reals from the Demandant made unto him before the Writ purchaſed, and he plead this, it is a good plea for the Demandant to ſay, that he which pleaded the Plea had nothing in the Freehold at the time of the releaſe made; for then he had no cauſe to have an Action Real againſt him.

¶ This is evident enough by that which hath been ſaid, that releaſe of all Actions reals muſt be made to him that is Tenant of the Land, becauſe a real action muſt be brought againſt ſuch a Tenant.

Sect. 496.

¶ ITem, en tiel cas ou home poit entre en Terres ou Tenements, & auxy poit aver un Action real de ceo, que eſt done per la Ley envers le Tenant, ſi en teſt cale le demandant releſſa al tenant touts maners de actions reals, uncore ceo ne tolle le demandant de ſon entrie, mes le demandant bien poit enter nient contrieant tiel releas, pur ceo que nul choſe eſt releſſe forſque laction, &c.

ALſo, in ſuch caſe where a man may enter into Lands or Tenements, and alſo may have an Action real for this, which is given by the Law againſt the Tenant, if in this caſe the Demandant releaſeth to the tenant all manner of Actions reals; yet this ſhall not take the Demandant from his entry, but the Demandant may well enter, notwithſtanding ſuch releaſe, for that nothing is releaſed but the Action, &c.

¶ *Poit enter.* Here it appeareth, that where a man may enter, a Releaſe of all Actions doth not bar him of his Right, becauſe he hath another remedy, viz. to enter. And this is agreeable with the authority of our (l) Books. But where his entry is not lawful, there a Releaſe of all actions is by conſequence a bar of his right, becauſe he hath releaſed the mean whereby he might recover his right. As if the Diſſeiſee releaſe all actions to the heir of the diſſeiſor, which is in by Deſcent, he hath no remedy to recover the land; but yet the Diſſeiſee hath a right, for that he hath releaſed his action, and not his right, as ſhall be ſaid hereafter, in the Chapter of remitter, in his proper place. If the heir of the Diſſeiſor make a feoffment in fee to two, and the diſſeiſee releaſeth to one of the Feoffees all actions, and he dieth, the Purbivor ſhall not plead this releaſe, for the cauſes abovelaid. And hereby alſo again appeareth another diverſity between a releaſe of a right, and a releaſe of actions.

(l) 18 E. 3. 34. 19 E. 3. Title 35.

If

19 Aſſ. 3 20 E 3. 19. 6. 19 H. 6. 4. 6. 21 H. 7. 23. b. 7 H. 6. 6.

It is to be obſerved when a man hath ſeveral remedies for one and the ſelf ſame thing, be it real, perſonal, or mixt, albeit he releaſeth one of his remedies, he may uſe the other.

Sect. 497.

¶ EN meſme le maner eſt de choſes perſonals, ſicom home a toſt prent mes biens, ſi jeo releſſa a luy touts actions perſonals, uncore jeo puiſſe per le Ley prender mes biens hors de ſon poſſeſſion.

IN the ſame manner is it of things perſonal; as if a man by wrong take away my goods, if I releaſe to him all actions perſonals, yet I may by the Law take my goods out of his poſſeſſion.

This of it ſelf is evident.

Sect. 498.

Glanvil. lib. 10. cap. 13.

¶ *Briefe de detinue.* Breve de detentione dicitur à Detinendo, becauſe Detinet is the principal word in the Writ. And it lieth where any man comes to goods either by delivery or by finding. In this Writ the Plaintiff ſhall recover the thing detained; and therefore it muſt be ſo certain as it may be known; and for that cauſe, it lieth not for money out of a bag, or cheſt, and ſo of Corn out of a ſack, and the like; theſe cannot be known from other. (t) A man ſhall have an action of Detinue of Charters which concern the inheritance of his Land if he know the certainty of them, and what land they concern; or if they be in Bag ſealed, or Cheſt locked, though he knoweth not the certainty of them: and it is good policy (if poſſibly he can) in that caſe to declare of one Charter in eſpecial, (u) and then the Defendant ſhall not wage his Law. (x) An action of Detinue for Charters doth ſound in the realty, for therein ſummons and ſeverance lieth, and for the Detinue of goods a Capias doth lie; but for Charters in eſpecial a Capias lieth not; and yet a Releaſe of actions perſonals in a Writ of Detinue of Charters is a good bar.

41 E. 3. 2.

(t) 41 E. 3. 2. 8 H. 6. 18. 28, 29. 21 E. 3. 28. 3 H. 6. 19. 30 H. 6. 4. 9 H. 9. 18.

(u) 10 H. 6. 20. 21 H. 6. 1. 14 H. 6. 4. 14 H. 4. 23, 24. 27.

(x) 20 H. 6. 45. 19 E. 3. Severance 14. 3. 1 E. 3. ib. 32. 42 E. 3. 13 40 E. 3. 25.

¶ *Aury ſi jeo ay aſc. cauſe dau briefe de Detinue de mes biens vers un auter coment q̄ jeo releſſa a luy touts actions perſonals, uncore jeo puiſſe per le Ley prender mes biens hors ō ſon poſſeſſion, pur ceo que nul droit de les biens eſt releſſe a luy, mes ſolement laction, &c.*

ALſo, if I have any cauſe to have a Writ of Detinue of my goods againſt another, albeit that I releaſe to him all actions perſonals; yet I may by the Law take my goods out of his poſſeſſion, becauſe no right of the goods is releaſed to him, but only the action, &c.

Sect. 499.

¶ *Per cauſe del Statute.* That is to ſay, the Statute of 4 H. 4. c. 7. and 11 H. 6. c. 4.

¶ *Car ſil voet pleder le releaſe generalment.* Here it appeareth, that when the Statute had given the Action reall a-

¶ *Item, ſi hom̄ ſoit diſſeiſie & le diſſeiſor fait feoffement a divers perſons & ſon uſe, & le diſſeiſor continualment prift les profits, &c. & le diſſeiſee releſſa a luy*

ALſo, if a man be diſſeiſed, and the diſſeiſor maketh a feoffment to divers perſons to his uſe, and the Diſſeiſor continually taketh the profits, &c. and the diſſeiſee releaſe

touts

touts actions reals, & puis il ſuiſt vers luy bꝛe Dentre ē nature daſſiſe ꝓ cauſe de leſtatute, pur ceo que il ꝓnent les ꝓfits, &c. Quære, coment le diſſeiſoꝛ ſerra aide per le dit releas: car ſil voile pleder le releas generalment, donques le demandant poit dire q̄ il naboit riens en le Frankte-nement al temps del releas fait, & ſil pleda releas ſpecialment, donques il ſobient conuſſē un diſſeiſin, & donques poit le demandant enter en le terre, &c. ꝓ ſon conuſans de le diſſeiſin, &c. Mes peradventure per ſpecial pleader il luy poit barꝛ ꝺ laction que il ſuiſt, &c. coment le demandant poit enter.

to him all actions reals, and after he ſueth againſt him a Writ of entry in nature of an Aſſiſe by reaſon of the Statute becauſe he taketh the profits, &c. *Quære*, how the Diſſeiſor ſhall be aided by the ſaid Releaſe; for if he will plead the releaſe generally, then the Demandant may ſay that he had nothing in the Freehold at the time of the Releaſe made; and if he plead the releaſe ſpecially, then he muſt acknowledge a diſſeiſin, and then may the Demandant enter into the land, &c. by his acknowledgment of the diſſeiſin, &c. but peradventure by ſpecial pleading he may bar him of the Action which he ſueth, &c. though the Demandant may enter.

gainſt the perꝛor of the ꝓfits, it enableth him to take and plead a Releaſe of all actions reals; and yet he hath neither *Jus in re*, nor *Jus ad rem*; which point is worthy of obſervation, for manifeſtation of the equity of the Law. 3 H. 7. 2.

¶ *Donques il covient conuſtre un diſſeiſin, &c.* In a Writ of Dower the Tenant pleaded that before the Writ purchaſed A. was ſeiſed of the land, &c. until by the Tenant himſelf he was diſſeiſed, and that hanging the Writ A. recovered againſt him, &c. judgment of the Writ, and adjudged a good plea; in which Plea the Tenant confeſſed a Diſſeiſin in himſelf. 15 E. 4. 4. b.

¶ *Donques poit le demandant enter.* So might he have done in this caſe that Littleton putteth, albeit the Tenant confeſſed no diſſeiſin. And therefore it is no prejudice to the Tenant to confeſs a diſſeiſin in himſelf, &c. and then, as Littleton here holdeth, the Action ſhall be barred.

But the Reader is to obſerve, that now by the Statute of 27 H. 8. cap. 10. which executes the poſſeſſion to the uſe, all the Statutes againſt Ceſtuy que uſe, or perꝛor of the ꝓfits have loſt their force. 28 H. 8. Dyer 32. 27 H. 8. cap. 10.

Sect. 500.

¶ Item, ſi home ſuiſt appeale de felony del moꝛt ſon Anceſtoꝛ envers un auter coment que lappellant releſſa al Defendant touts maners dactions reals & perſonals, ceo ne aidera my le defendant, pur ceo que teſt appeal neſt pas

ALſo, if a man ſue an appeal of Felony of the death of his Anceſtor againſt another, though the Appellant releaſe to the Defendant all manner of actions real and perſonal, this ſhall not aid the Defendant, for that this Appeal is not

OUr Author having ſpoken of Common Pleas, now treateth of certain Pleas Criminall, or Pleas of the Crown, whereof it is ſaid.

(a) Item, criminalium alia majora, alia minora, alia maxima, ſecundum criminum quantitatem; Sunt enim Crimina Majora, & dicuntur capitalia, eò quod ultimum inducunt ſupplicium, &c. Minora verò, que fuſtigationem inducunt, vel pœnam pilloralem, vel tumboralem, vel carceris (a) Bract. lib. 3. fo. 101. b.

carceris inclusionem, &c.

(b) Fleta lib.1. cap.15.

(b) Criminalium quædam ſententialiter mortem inducunt, quædam vero minime. (c) De peche eſt briefe diviſion, car eſt mortal ou venial, ſolon que ceo que appiert es paines. And that crime is called Mortal or Corporal; mortal, becauſe it deſerveth death; and ſuch crimes are called Venial, as may be redæmed or ſatisfied by ſome other puniſhment then by death.

(c) Mir.c.1. Sect.4. & ca. 4. des paines en divers manners.

(x) Mir. ca.2. Sect.7. Bract. lib.3 fo.127. Brit. ca.22. 23. Fet.li.1.ca.31, 32, 33.

¶ *Appeale de Felonie.* (x) Appellum ſignifieth Accuſatio, an Accuſation, and therefore to appeal a man is as much as to accuſe him; and in (y) ancient Bookes he that doth appeal is called Accuſator, and is peculiarly in legal ſignification applyed to Appeals of three ſorts. First, of wrong to his Anceſtor, whoſe heir male he is, and that is onely of death, whereof our Author here ſpeaketh. The ſecond is of wrong to the Husband, and is by the wife only of the death of her husband to be proſecuted. The third is of wrongs done to the Appellants themſelves, as Robbery, Rape, and Maim. The word Appellum is derived of Appeller, to call, becauſe Appellans vocat reum in judicium. He calleth the Defendant to judgment, and the Plaintiff is called the Appellant.

(y) Glanvil lib. 7. cap.9. Et lib.14. cap.1. & 3.

¶ *Appeale.* Appellatio is a removing of a cauſe in any Eccleſiaſtical Court to a Superior; but of this there needeth no ſpeech in this place.

24 H.8. ca.12. 1 Eliz.ca.1.

¶ *De mort.* Appeal of death is of two ſorts, of Murther and of Homicide. Murther is when one is ſlain with a mans will, and with malice prepenſed or fore-thought; Homicide as it is legally taken, is when one is ſlain with a mans will, but not with malice prepenſed. Chance-medly or Per infortunium, is when one is ſlain caſually and by miſadventure, without the will of him that doth the act, whereupon death inſueth; but of this no Appeal doth lye. Murther cometh of the Saxon word Mordrue.

Lamb. expoſ. verb. Eſtimatio. Flet. lib.1. cap.42. Hoved. fo.344.

Were is an old Saxon word, ſometimes written Wers, and ſignifieth the price of the life of a man. Eſtimatio capitis, that is, ſo much as one paid for the killing of a man; by which it appeareth, that ſuch government was in thoſe days, as ſlaughters of men were moſt rarely committed, as Maſter Lambert collecteth. And you ſhall not read of any inſurrection or rebellion before the Conqueſt, when the view of Frankpledge and other ancient Laws of this Realm were in their right uſe.

21 H. 6. 16.

¶ *Mes ſil releaſe al Defendant touts manners d' actions, &c.* And the reaſon is, for that then all Actions, as well criminall as real, perſonal and mixt, be releaſed. But a releaſe of actions real and perſonal cannot bar an appeal of death, becauſe that Releaſe extendeth to common or civil actions, and not to actions criminal: but Releaſes of all actions criminal or mortal, or concerning Pleas of the Crown, are good bars in an Appeal of death, and ſo the (&c.) in the end of this Section is well explained.

action real, entant que l'appellant ne recovera alcun realtie en tiel appeale: Me tiel appeale neſt pas action perſonal, entant que le tort fuit fait a ſon Aunceſtor, & nemy a luy. Mes ſil releſſa a le Defendant tout manners Actions, donques il ſerra bone barre en Appeale. Et iſſint home poit beyer que releaſe de touts maners dactions, eſt melior que releas de actions reals & perſonals, &c.

an Action real, in as much as the Appellant ſhall not recover any Realty in ſuch Appeal; neither is ſuch Appeal an action perſonall, in as much as the wrong was done to his Anceſtor, and not to him. But if he releaſe to the Defendant all manner of Actions, then it ſhall be a good bar in an Appeal. And ſo a man may ſee that a Releaſe of all manner of Actions is better then a Releaſe of Actions reals and perſonals, &c.

Sect 501.

¶ Item, en appeale de Robberie, ſi l' defendant voit pleader un releaſe de lappellant de touts actions perſonals, ceo ſemble nul Plée. Car action de l' Appeale, lou lappellée aura judgement de mort, &c. eſt pluis hault que action perſonal eſt, & neſt pas proprement dit action perſonal: Et pur ceo ſi le defendant voiloit plead un releaſe del Appellant de barrer luy dappeale, en ceſt caſe il covient daver un releaſe de touts manſ dappeals, ou touts manners dactions, cõe il ſemble, &c.

ALſo, in an Appeal of Robbery, if the Defendant will plead a releaſe of the Appellant, of all actions perſonals, this ſeemeth no Plea: for an Action of Appeal, where the Appellee ſhall have judgement of death, &c. is higher than any action perſonal is, and is not properly called an action perſonal, and there if the Defendant will plead a releaſe of the Appellant; to barre him of the Appeal, in this caſe he muſt have a releaſe of all manner of Appeals, or all manner of Actions, as it ſeemeth, &c.

¶ *Robberie.* Roberia properly is, when there is a felonious taking away of a mans goods from his perſon: and it is called Robbery, becauſe the goods are taken as it were De la Robe, from the Robe, that is, from the Perſon: but ſometime it is taken in a larger ſenſe. 22 Aſſ. 39. W. 1. cap. 20.

¶ *Judgement de mort, &c.* By this (&c.) is implied Appeals of Rape, of Arſon or Burning, of Felony or Larceny; for therein alſo is judgement of death, and are within our Authors reaſon.

¶ *Come il ſemble, &c.* It is to be underſtood, That, firſt, a releaſe of all Actions criminal, mortal, or concerning Pleas of the Crown. Secondly, a releaſe to all Actions generally. Thirdly, a releaſe of all Appeals. And laſtly, a releaſe of all Demands, are good bars in all theſe kinds of Appeals. Vide Sect. 508.

Sect. 502.

¶ MEs en Appeale de Maihem un releaſe de touts manners dactions perſonals eſt bone plée en Barre, pur ceo que en tiel action il ne recovera forſq; damages, &c.

BUt in Appeal of Maime a releaſe of all manner of actions perſonals is a good plea in bar, for that in ſuch an Action he ſhall recover nothing but damages.

¶ *Mayhem.* Mahemium membri Mutilatio, or Obtruncatio, comety of the French word Mehaigne, and ſignifieth a Corporal Hurt, whereby he loſeth a Member, by reaſon whereof he is leſs able to fight; as by putting out his eye, beating out his foretooth, breaking his ſkull, ſtriking of his arm, hands, or finger, cutting off his legs or foot, or whereby he loſeth the uſe of any of his ſaid members. Mir. ca. 1. Sect. 9. Glanv. li. 14. ca. 7. Bract. lib. 3. Tract. 2. ca. 24. Brit. f. 48. ca. 25. Flet. lib. 2. ca. 38. Stanf. Pl. Cor. f. 38. b. 28 E. 3. 94. 8 H. 4. 21.

Damages, &c. V. Sect. 194.

¶ *Releaſe de touts manners Actions Perſonals eſt bone Plea, &c.* And the reaſon is, for that every Action wherein damages only are recovered by the Plaintiff, is in Law taken for an Action perſonal. 21 H. 6. 16.

Sect.

Sect. 503.

¶ Item, ſi home ſoit utlage en Action perſonal per proces ſur le Original, et poſt brebe Derror; ſi celuy a que ſuit il fuit utlage, voile pleader envers luy un releas ô toutz manners Actions Perſonals, ceo ſemble nul plee, car per le dit Action il ne recovera rien en perſonaltie, forſque tantſolement de reverſer le Utlagarie: mes un Releaſe de Briefe Derrour eſt bone plea.

ALſo, if a man be outlawed in an Action perſonal by proceſs upon the Original, and bringeth a Writ of Errour, if he at whoſe ſuit he was outlawed, will plead againſt him a Releaſe of all manner of Actions perſonals, this ſeemeth no Plea; for by the ſaid Action hee ſhall recover nothing in the perſonalty, but only to reverſe the Outlawrie: But a Releaſe of the Writ of Errour is a good plea.

¶ *Briefe de Error.* This Writ lyeth when a man is grieved by any error in the foundation, proceeding, judgement, or execution, and thereupon it is called Breve de errore corrigendo. But without a judgement or an award in nature of a judgment no writ of Error doth lie, for the words of the Writ be, Si judicium redditum ſit: and that judgement muſt regularly be given by Judges of Record, and in a Court of Record, and not by any other inferiour Judges in baſe Courts, for thereupon a writ of falſe judgment doth lie. In this caſe of Utlawry upon Proceſs the judgment is given (in the County Court, which is no Court of Record) by the Coroners (ſaving in London judgement is given by the Recorder, and not by the Mayor, who is Coroner by the Cuſtom of the City:) for after the Defendant is Quinto exactus, and maketh default, the judgement is, Ideo utlagetur per judicium Coronatorum; and in London, Per judicium Recordatoris: ſo as by the outlawry the Plaintiff recovers nothing, but the King taketh the whole benefit thereof; for the Law did intend, that the Defendant would rather appear and anſwer the Plaintiff, &c. than to forfeit all his Goods and Chattels, Debts and Duties to the King, by his default and contumacy. But Littleton is to be intended, That the Sheriff do return the Exigent, whereby the Outlawry appears of Record, or that the Outlawry be removed by a Certiorari; for before that time that the Outlawry appear of Record, the Defendant doth not forfeit his goods, nor the Plaintiff can be diſabled, nor any Writ of Error doth lye in that caſe. And this is the cauſe that the goods of Outlaws cannot be claimed by Preſcription, becauſe they are not forfeited until the Outlawry appear of Record, Vid. Sect. 197. where it appeareth by Littleton, That the Plaintiff cannot be diſabled by Outlawry, unleſs it appeareth of Record.

Li. 5. f. 111. Foxleys caſe. *Li* 7. f. 11. 12. Jentlemans caſe. 15 El. Dyer 317. Lib. 9. f. 119. 8. Zanchars caſe. 28 Aſſ. 49. 12 E. 3. Utlage 3. 38 E. 3. 13 Mich. 4, & 5 El. Dyer f. 222. Vide Sect. 197.

¶ *Car per le dit Action il recovera rien en le perſonaltie.* Hereupon is to be obſerved a diverſity, when by the Writ of Error the Plaintiff ſhall recover, or be reſtored to any perſonal thing, as Debt, Damage, or the like; for then by the reaſon that Littleton here yieldeth, the releaſe of all actions perſonals is a good plea, for that the Plaintiff is to recover, or to be reſtored to ſomething in the perſonalty. And ſo likewiſe when Land is to be recovered, or to be reſtored in a Writ of Error, a releaſe of all actions reals is a good bar. But where by a Writ of Error the Plaintiff ſhall not be reſtored to any perſonal or real thing, there a releaſe of all actions real or perſonal, is no bar; and therefore Littleton here purſueth his caſe with great caution: If a man (ſaith he) by Proceſs upon the Original be outlawed, there indeed he ſhall be reſtored to nothing in the perſonalty againſt the Plaintiff. But where by the Outlawry he forfeited all his Goods and Chattels to the King, he ſhall be reſtored to them; alſo thereby he ſhall be reſtored to the Law, and to be of ability to ſue, &c. But if the Plaintiff in a perſonal action recover any debt, &c. or damages, and be outlawed after judgement, there in a Writ of Error brought by the Defendant upon the principal judgement, a releaſe of all actions perſonals is a good plea. And ſo it is where a Judgement is given in a real action, a releaſe of all actions reals is a good bar in a Writ of Error brought thereupon.

1 H. 4. 6.

If

If the tenant in a real action releaſe to the Defendant after recovery of his right in the land, he ſhall not have a writ of Error, for that he cannot be reſtored to the land. 9 H. 9. 47.

And ſo it is, if debt, &c. or damages be recovered in a perſonal action by falſe Verdict, and the Defendant bringeth a Writ of Attaint, a (a) releaſe of all actions perſonals is a good bar of the Attaint; for thereby the Plaintiff is to be reſtored to the debt, &c. or damages which he loſt: the like Law is, if Judgment be given upon a falſe Verdict in a real action, a releaſe of all actions reals is a good bar in an Attaint. For both the writ of Error, and the writ of Attaint, do inſue the nature of the former action, &c. (a) 26 H. 8. 3. b. 13 E. 4. 1. 2.

And ſo it is, if a writ of Audita Querela be brought by the Defendant in the former action to diſcharge himſelf of an execution, a releaſe of actions perſonals is a good bar, becauſe he is to diſcharge himſelf of a perſonal execution. 34 H. 6. 31. 35 H. 6. 19. 29. Aſſ. 35. 47 E. 3. 6. 14 E. 3 37.

¶ *Mes un releaſe de briefe de error eſt bone plea, &c.* So as in this ſpecial caſe here put by Littleton, wherein the Plaintiff is to recover, or be reſtored to nothing againſt the party; yet for that the Plaintiff in the former action is privy to the Record, a releaſe of a writ of Error to him is ſufficient to bar the Plaintiff in the writ of Error of the ſuit, and vexation by the writ of Error. And ſo note, that an action real or perſonal doth imply a recovery of ſomething in the realty or perſonalty, or a reſtitution to the ſame; but a writ implieth neither of them, which is worthy of obſervation.

Sect. 504.

¶ ITem, ſi home recover debt ou damages, & il releſſa al Defendant touts manners dactions, uncore il puit loialment ſuer execution per Capias ad ſatisfaciendum, ou per Elegit, ou Fieri facias, car execution per tiel briefe, ne poit eſtre dit action.

ALſo, if a man recover debt or damages, and he releaſeth to the Defendant all manner of Actions, yet he may lawfully ſue Execution by *Capias ad ſatisfaciendum*, or by *Elegit*, or *Fieri facias*: For Execution upon ſuch a Writ cannot be ſaid an Action.

¶ HEre appeareth a diverſity between an Action and an Execution. For regularly an Action is ſaid in his proper ſenſe to continue until Judgment be given, and after judgment then doth Proceſs of Execution begin; and therefore a releaſe of all Actions regularly is (b) no bar of execution, for the execution doth begin when the Action doth end. And therefore the foundation of the firſt is an original writ, and doth determine by the Judgment; and writs of execution are called Judicial, becauſe they are grounded upon the Judgment. Vide Sect. 253. 8. 3. 9. 4 E. 3. Attorney 18. 33 H. 6. 9. 34 H. 6. 51. (b) 13 H. 4. Releaſe 53. 19 H. 6. 3. 26 H. 6. Execution 7.

¶ *Per Cap. ad ſatisfaciendum.* This is a Judicial writ for the taking of the body in execution until he hath made ſatisfaction: where a Capias ad ſatisfaciendum lyeth at the Common Law, and where it is given by Statute, you may read at large in my Reports. Sir William Herberts caſe, lib. 3. fol. 11, 12.

I have read two antient Records touching the taking of the body in Execution, whereof to my remembrance, I never read any touch in our Books, yet will I recite them, and leave them to the judicious Reader. William de Walton brought an Action of Treſpaſs of breaking his cloſe againſt John Martin, and upon not guilty pleaded, he was found guilty and damages aſſeſſed, whereupon Judgment was given, that the Plaintiff ſhould recover his damages, Et quod prædictus Johannes capiatur. And the Record ſaith, Quod prædictus Johannes venit coram Domino Rege, & reddidit ſe priſonæ, & quia conſtat Curiæ per inſpectionem corporis ipſius Johannis, quod idem Johannes eſt talis ætatis quod pœnam impriſonamenti ſubire non poteſt, ideo dictum eſt ei, quod eat inde ſine die. The other Record is, That Ellen Alloc brought an Appeal of Robbery againſt John Boskiſeleke Clerk, Richard Charta and others, who pleaded not guilty, and were not found guilty: whereupon Judgment was given that they ſhould go quit: Et prædicta Elena pro falſo appello ſuo committatur priſonæ, &c. (for (b) by the Statute ſhe ought to be impriſoned, in that caſe, for a year.) But the Record ſaith, Quia eadem Elena prægnans fuit, & in periculo mortis, ipſa dimittitur per manucaptionem, &c. ad habendum corpus uſque Quind. Michaelis, &c. Paſch. 14 E. 3. Rot. 166. coram Rege in Theſaur. Surrey. Mich. 41 E. 3. Rot. 37. coram Rege Cornub. in Theſaur. (b) W. 2. cap. 12.

There be certain maxims in the Law concerning Executions, as taking ſome in ſtead of many. Ea quæ in Curia noſtra rite acta ſunt, debitæ executioni demandari debent. Parum eſt latam eſſe ſententiam niſi mandetur executioni. Executio juris non habet injuriam. Executio eſt fructus & finis legis. Juris effectus in executione conſiſtit. Proſecutio legis eſt gravis vexatio, executio legis coronat opus. Boni Judicis eſt Judicium ſine dilatione mandare executioni. Favorabiliores ſunt executiones aliis proceſſibus quibuſcunque. But now let us hear what Littleton ſaith.

¶ *Per Elegit.* This is alſo a judicial writ, and is given by the Statute either upon a recovery for Debt or Damages, or upon a Recognizance in any Court. And it is called a writ of Elegit, for that according to the Statute that ſaith, (c) Sic de cætero in electione illius, &c. ſequi breve quod Vicecomes fieri faciat, &c. vel quod liberet ei, &c. The words of the writ be, Elegit ſibi liberari, &c. And thereupon it is called an Elegit. By this writ the Sheriff ſhall deliver to the Plaintiff, Omnia catalla debitoris, exceptis bobus & aratris Carucæ) & medietatem terræ. And this muſt be done by an inqueſt to be taken by the Sheriff.

(c) W.2.cap.18.

When Littleton wrote, by force of certain Acts (d) of Parliament, Execution might be had of Lands (beſides by force of the Elegit) upon Statutes Merchant, Statutes Staple, and Recognizances taken in ſome Court of Record, and ſince he wrote upon a Recognizance or Bond taken by force of the Statute * of 23 H. 8. before one of the chief Juſtices, or the Mayor of the Staple, and Recorder of London out of term, which hath the effect of a Statute Staple. The manner of the Executions upon Body, Lands, and Goods, appeareth in the Statute quoted in the margent.

(d) 11 E.1.Stat. de Aſton Burnel. 13 E. 1. de mercatoribus 27 E.3. cap. 22. Vide Fleta, l 2. cap. 57.25 E.3.53. (*) 2 H 8.cap.6.

Since Littleton wrote, a profitable Statute hath been made (e) concerning executions of Lands, Tenements, and Hereditaments, whereby it is provided, that if after ſuch Lands, &c. be had and delivered in execution upon a juſt or lawful title, wherewithal the ſaid Lands, &c. were liable, tied, or bound at ſuch time, as they were delivered or taken into execution, ſhall be recovered, deveſted, taken, or evicted out of, or from the poſſeſſion of any ſuch perſon, &c. before ſuch times as the ſaid tenants by execution, their Executors or Aſſigns ſhall have fully levied their debt and damages, for the which the ſaid Lands, &c. were taken in Execution, then every ſuch Recoveror, Obligee, and Recognizee, ſhall have a Scire facias out of the ſame Court from whence the former Execution did proceed, againſt ſuch perſon or perſons as the former Execution was purſued, their Heirs, Executors or aſſigns, to have Execution of other Lands, &c. liable and to be taken in Execution for the reſidue of the debt or damages; Sed opus eſt interprete.

(e) 32 H. 8. cap.5.

Therefore firſt it is to be known, that where the tenant by Execution hath remedy given to him by Law after eviction, there the Statute extendeth not to it, for the Act ſaith, by reaſon whereof, the ſaid Recoverors, Obligees, and Recognizees, have been clearly ſet without remedy, &c. and the body referreth to the preamble, and the party ought not to have double ſatisfaction, one by the former Laws, and another by this Statute.

Lib.4. fol.66. Fulwoods caſe.

And therefore if part of the land, &c. be evicted from the tenant by execution, this Statute extendeth not to it; becauſe he ſhould hold the reſidue, till he be fully ſatisfied, and he muſt be contented, if all be evicted ſaving one Acre, to hold that, though it be but a poor remedy: for no new execution in that caſe he can have upon this Statute. Therefore if the Conuſee hath remedy in præſenti for part, or in futuro for all or part, this Statute extendeth not to it.

Secondly, If a man be bound to A. in a Statute of a thouſand pounds, and by a latter Statute to B. in a hundred pounds, and B. firſt extendeth, and then A. extendeth and taketh the land from B. yet B. ſhall have no aid of the Statute, becauſe after the extent of A. B. ſhall re-enjoy the land, by force of his former Execution.

Thirdly, If the wife of the Conuſor recover Dower againſt the tenant by Execution, he ſhall hold over, and ſhall have no aid of this Statute.

Fourthly, If a man put out his Leſſee for years, or diſſeiſe his Leſſee for life, and after knowledge a Statute and Execution is ſued againſt him, and the Leſſors re-enter, the tenant by Execution after the leaſes ended, ſhall hold over, and have no aid of this Statute.

Fifthly, This Statute muſt not be taken literally, but according to the meaning; therefore where the letter is until he, &c. or his Aſſigns ſhall fully and wholly have levied the whole debt or damages: if he hath aſſigned ſeveral parcels to ſeveral Aſſigns, yet all they ſhall have the land, but till the whole debt be paid.

Sixthly, where the words be, for the which the ſaid lands, &c. were delivered in execution, A Diſſeiſor convey lands to the King, who granteth the ſame over to A. and his heirs to hold by fealty, and twenty pound rent, and after granteth the Seigniory to B. B. knowledgeth a

Statute

Statute, and Execution is ſued of the Seigniory. A. dieth without heir and the Conuſee entereth, and is evicted by the Diſſeiſee, he ſhall have the aid of this Statute; and yet it is out of the Letter of the Law, for the Seigniory was delivered in Execution and not the Tenancy, but he was tenant by execution of thoſe lands; and therefore within the Statute. But the perquiſite of a Villein being evicted out of the Statute, for he is Tenant in fee ſimple thereof, and not Tenant by execution.

Seventhly, where the words be (delivered and taken in execution) yet if after the Liberate the Conuſee entereth (as he may) ſo as the Land is never delivered, yet is he within the remedy of this Statute, for he is Tenant by execution.

Eighthly, where the Statute ſaith, then every ſuch Recoveror, Obligee, and Recogniſee, ſhall, &c. and ſaith not, their Executors, Adminiſtrators or Aſſigns, but they are omitted in this material place; yet by a benign interpretation this ſtatute ſhall extend to them, becauſe they are mentioned in the next precedent clauſe of the eviction; and the remedy muſt by conſtruction be extended to all the perſons, that appear by the Act to be grieved; a point worthy the obſervation.

Ninthly, where the ſtatute giveth a Scire fac' out of the ſame Court, &c. if the Record be removed by writ of Error into another Court, and there affirmed, the tenant by Execution that is evicted ſhall have a Scire fac' by the equity of this Statute out of that Court, becauſe the Scire fac' muſt be grounded upon the Record, Et ſic de ſimilibus.

Tenthly, where the Statute giveth the Scire fac' againſt ſuch perſon or perſons, &c. that were parties to the firſt Execution, their heirs, Executors or Aſſigns, &c. this muſt not be taken ſo generally as the Letter is; for if the firſt Execution were had againſt a purchaſor, &c. ſo as nothing was liable in his hands but the Land recovered; if this Land be evicted from Tenant by Execution, no Scire fac' ſhall be awarded againſt him, his Heirs, Executors, or Aſſigns; but if he hath other Lands ſubject to the Execution, then a Scire fac' lieth againſt him or his Aſſigns, but not againſt his Executors; neither in that caſe can he have a Scire fac' upon this Statute againſt the firſt Debtor or Recognizor, becauſe it giveth it only againſt him, &c. that was party to the firſt Execution, his Heirs, Executors or Aſſigns. But if there be ſeveral aſſigns of ſeveral parcels of Lands ſubject to the execution, one Scire fac' upon this Statute ſhall lie againſt all the Aſſigns. Sed eſt modus in rebus. This little taſte ſhall give a light to the diligent Reader, not only to ſee into the ſecrets of this Statute, but into others alſo of like nature.

And by the Statute of 23 H.8.cap.6. it is provided, that the Obligee, &c. ſhall have in every point againſt ſuch Recognizor, &c. like Proceſs, Execution, commodity & advantage in every behalf, as hath been had or made upon the Statute Staple, and under ſuch manner & form, as is for the ſame Statute ſtaple provided: by force of which branch, if the tenant by execution by force of the Act of 23 H.8. be evicted, he ſhall have the remedy provided for tenants by execution upon a Statute ſtaple, by the Act of 32 H.8. In like manner by force of that clauſe 23 H.8. if the extendors upon a Statute ſtaple, &c. do extend the Lands, &c. at too high a rate, the Obligee may pray that the Extendors themſelves may take the lands, &c. at that rate, &c. by force of the ſaid Statutes of Acton Burnel, and De mercatoribus. Alſo no execution ſhall be ſued againſt the Heir within age.

But note, that upon a writ of Elegit the Plaintiff cannot make any ſuch prayer, becauſe thoſe antient Statutes do extend to a Statute Merchant, or a Statute Staple only, and neither to a recovery of debt or damages, nor to a Recognizance in Court, and ſo hath it been reſolved (f.)

Note, it appeareth by the Preamble of the ſaid Act of 32 H.8. and by divers (g) books, that after a full and perfect execution had by extent returned, and of Record, there ſhall never be any re-extent upon any eviction: but if the extent be inſufficient in Law, there may go out a new extent.

(h) If a man have a Judgment given againſt him for debt or damages, or be bound in a recognizance, and dieth his heir within age; or having two daughters, and the one within age, no execution ſhall be ſued of the lands by Elegit during the minority, albeit the heir is not ſpecially bound but charged as Terre tenant (i) and ſo againſt an heir within age no execution ſhall be ſued upon a Statute-Merchant or Staple, nor upon the obligation or recognizance upon the Statute of 23 H.8. for it is excepted in the Proceſs againſt the heir. Neither if the heir within age indow his mother, ſhall execution be ſued againſt her during his minority.

Note, that by the Statute (k) of 27 E.3. the Execution of Lands upon a Statute ſtaple is referred to the Statute Merchant; and by the Statute De Mercatoribus no Execution ſhall be had againſt the heir ſo long as he is within age.

Alſo ſince Littleton wrote, there is a right profitable Statute (l) made againſt fraudulent Feoffments, Gifts, Grants, &c. Judgments and Executions, as well of Lands and Tenements,

40 E.3.25.b.44 E.3. fol. 10. 2 *rol.* 4.17. 15 H.7.15.

(f) Mich. 4 & 5 Ph. & Mar. Bendloes, by all the Juſtices of the Common Pleas 15 E.3. Extent 7.

(g) 15 E.3. Extent 7. 22 E.3. Recovery in value 21.31 E.3. Exten. 13. 17 E.3.76 15 E.3. Scire fac. 115.7 H.4.19. 21. Aſſ. 44.22 E.3. fol. 44 E.3.10. 9 H.7.9. 15 H.7.15. 11. El. Dyer. 199. 9 H.8. Stat Merchant. Br. 40

(h) 11 E.3 age 4. 15 E.3. age 95. 24 E.3. 28,29. Aſſ. 37. 29 E.3. 30.47. Aſſ. 4.47 E.3. 7.l.3.f.13. Sir William Herberts caſe. Brook age 33.

(i) Temp. E.1. Aſſ. 402. 417.16 H.7.6. Lieure dentre, 545. Brook age. 33.

(k) 27 E.3. cap.23.

(l) 13 El. cap.5. Lib.3.f.80, &c. Twynes caſe. Lib 5.f. 60. Gooches caſe.

ments, as of Goods and Chattels, to delay, hinder or defraud Creditors and others of their juſt and lawful actions, Suits, Debts, Damages, Penalties, Forfeitures, Heriots, Mortuaries, and Releaſes, for the expoſition of which and other Statutes ſee the Authorities quoted in the Margent.

Lib. 6 fol 18. Pakemans caſe. Lib 10. f. 56 the Chanc. of Oxfords caſe. See the ſtatutes of 3 . 7. cap. 4. & 50 E. 3. c. 6. Mich. 12. & 13 El. Dyer 295. 18 El. 351. Dyer.

And it is to be obſerved, that the words of the ſaid Act of 13 Eliz. are, Be it therefore declared, ordained, and enacted: and therefore like caſes in ſemblable miſchief ſhall be taken within the remedy of this Act, by reaſon of this word (Declared) whereby it appeareth, what the Law was before the making of this Act. But let us now return to Littleton.

W. 2. cap. 18.

¶ *Fieri facias.* This is a writ mentioned in the ſaid ſtatute, but is a writ of Execution at the Common Law. And is called a Fieri facias, becauſe the words of the writ directed to the Sheriff be Quòd fieri facias de bonis & Catallis, &c. and of thoſe words the writ taketh his denomination.

But note, that a Capias ad ſatisfaciendum is not mentioned in the ſaid Statutes, becauſe no Capias ad ſatisfac' did lie at the Common Law upon a judgment for debt, &c. or damages, but only when the original action was Quare vi & armis, &c. But latter Statutes have given a Capias ad ſatisfac' where debt, &c. or damages are recovered, as it appeareth at large (m) in Sir William Herbers caſe, whereunto I refer the Reader.

(m) Lib. 7. f. 11. in Sir William Herberts caſe.

And it is to be obſerved, that theſe three writs of execution ought to be ſued out within the year and the day after judgment; but if the Plaintiff ſueth out any of them within the year, he may continue the ſame after the year until he hath execution. And to none of theſe writs of Execution the Defendant can plead; but if he hath any matter ſince the Judgment to diſcharge him of Execution, he may have an Audita querela, and relieve himſelf that way, but plead he cannot. As if the plaintiff after releaſe unto the Defendant all Executions; yet in none of theſe three writs he ſhall plead it, but is driven to his Audita querela, as hath been ſaid.

Sect. 505.

¶ *Scire facias.* This is a judicial writ, & properly lyeth after the year and day after judgment given, and is ſo called, becauſe the words of the writ to the Sheriff be, Quod Scire facias prætat' T. (being the Defendant) Quod ſit coram, &c. oſtenſurus ſi quid pro ſe habeat aut dicere ſciat, quare, &c. So as by the writ it appeareth, that the Defendant is to be warned to plead any matter in Barre of Execution, and therefore albeit it be a judicial writ, yet becauſe the Defendant may thereon plead, this Scire facias is accounted in Law to be in nature of an action; and therefore (n) a Releaſe of all actions is a good Barre of the ſame, and likewiſe a Releaſe of Executions is a good barre in a Scire facias, this writ was gi-

(n) 19 H. 6. 3. 18 E. 4. 7.

¶ Mes ſi apres lan & jour le plaintife voit ſuer un Scire facias, a ſacher ſi le defendant poit rien dire pur que le plaintife navera execution, donques il ſemble que tiel releas de touts actions ſerra bon plée en barr: Mes aſcuns ont ſemble contrary, entant que le briefe de Scire facias eſt un briefe dexecution, & eſt daver execution, &c. Mes uncore entant que ſur iñ l' briefe l'defendant poit pleader divers matters puis l'judgement rendue de luy ouſter dexecution, coñ utlagary, &c. & divers auters

But if after the year and day the plaintiff will ſue a *Scire facias*, to know if the defendant can ſay any thing why the plaintiff ſhould not have execution, then it ſeemeth that ſuch releaſe of all actions ſhall be a good plea in barre. But to ſome ſeems the contrary, in as much as the writ of *Scire facias* is a writ of Execution, and is to have Execution, &c. But yet in as much as upon the ſame Writ the Defendant may plead divers matters after judgement given to ouſt him of execution, as outlawry, &c. and divers others matters, this

matters

matters, ceo bien poit eſtre dit action, &c.

may well be ſaid an action, &c.

ben in this case by the Statute of W. 2. for at the Common Law, if the Plaintiff had surceased to sue Execution by Fieri facias, or Levari facias, a year and a day, he had ben driven to his new original. W. 2. ca. 45. 18 E. 3. 297. 298. 18 E. 3. 3. l. 3. fol. 12. Sir William Herberts case. Flet. l. 2. cap. 12.

¶ *Ceo bien poit eſtre dit action.* Here is to be observed, that every writ whereunto the Defendant may plead, be it original or judicial is in law an action.

Sect. 506.

¶ ET jeo croy, que en un Scire facias hors dun fine, un releas de touts manners d'actions eſt bon pleé en barre.

AND I take it, that in a *Scire facias* upon a fine, a release of all manner of actions is a good plea in bar.

This upon that which hath ben said, is evident of it self.

Sect. 507.

¶ MES lou home recover a debt ou damages, & eſt accord̃ perenter eux, que le Plaintife ne ſuer̃ execution, donqz ſi covient q̃ le plaintife fait un releas a luy de touts maners derecutions.

BUt where a man recovereth debt or damages, and it is agreed between them that the Plaintiff shall not sue execution, then it behoveth that the Plaintiff make a release to him of all manner of executions.

¶ *Il covient.* Albeit Littleton here saith, he ought or must, &c. yet there be other words which will release an Execution, without express words of a release of Execution.

As if a man release all suits, the execution is gone: for no man can have Execution without prayer and suit but the King only, and therefore if the King release all suits, it is no bar of his Execution, because in the Kings case the Judges ought to award Execution Ex Officio without any suit, but a release of Executions doth bar the King in that case. And so note a diversity between a release of all actions, and a release of all suits. 19 H. 6. 4. 26 H. 6. Execution 4. li. 8. f. 153. Ed. Althams case. Vid. Brook tit. Releases 87.

So if the body of a man be taken in execution, and the Plaintiff release all actions, yet shall he remain in Execution; but if he release all debts or duties, he is to be discharged of the Execution, because the debt or duty in it self is discharged. 26 H. 3. tit. Execution. 7.

In the same manner, if Execution be sued upon a recognizance, by Elegit, and the Conuſee by Deed make a Defeasance, that if the Conuſor doth such an Act, that then the recognizance shall be void, by this the Execution is discharged. 20. Ass. p. 7.

So it is if Judgment be given in an action of debt, and the body of the Defendant is taken in Execution by a Capias ad satisfac', and after the Plaintiff releaseth the judgment, by this the body shall be discharged of the execution. 26 H. 6. ubi supra.

If the Plaintiff after Judgment release all demands, the Execution is discharged, as shall appear by that which next hereafter shall be said.

If A. be accountable to B. and B. release to him all his duties, this is no bar in an action of account, for duties extend to things certain, and what shall fall out upon the account is incertain; and albeit the Latine word is Debita, yet the duties do extend to all things due, that is certain; and therefore discharged Judgments in personal Actions, and Executions also. 20 H. 6. 6. per Paſton.

Sect. 508.

¶ *Touts manners de Demands.*

¶ *Demand*, Demandum is a word of Art, and in the underſtanding of the Common Law is of ſo large an extent, as no other one word in the Law is, unleſs it be Clameum, whereof Littleton maketh mention, Sect. 445. And here it is to be obſerved, that there be two kinds of demands or claims, viz. a demand or claim in Deed, and a demand or claim in Law; or an expreſs, and an implied demand or claim. Littleton here putteth examples of both: and firſt he ſpeaketh of real actions, wherein he that bringeth his action maketh his demand: and therefore he is properly called a Demandant, and he that defendeth is called Tenant, becauſe he is Tenant of the Freehold of the Land.

Lit. Sect. 445. Bract. li. 1. cap 10. Pl. Com. Stoills caſe 359. &c.

¶ Item, ſi hom releſſa a un auter touts manners de demands, ceo eſt le plus melior releaſe a luy a que le releaſe eſt fait que il poit aver, & plus urera a ſon advantage. Car per tiel releaſe de touts manners de demands, touts manners d'actions reals, perſonals, & actions d'appeale ſont ales & extincts, & touts manners de executions ſont ales & extincts.

ALſo, if a man releaſe to another all manner of demands, this is the beſt releaſe to him to whom the Releaſe is made, that he can have, and ſhall enure moſt to his advantage. For by ſuch releaſe of all manner of demands, all manner of actions reals, perſonals, and Actions of Appeal, are taken away and extinct, and all manner of executions are taken away and extinct.

Of demands implied, or in Law, Littleton putteth examples: Firſt, of all Actions perſonals. Secondly, of appeals, for in both thoſe caſes he that bringeth the ſuit is called Plaintiff, and not Demandant; and he that defendeth is called Defendant. Thirdly, of Executions. Fourthly, of title or right of entry, either by force of a Condition, or by any former right, which verily is a demand or claim in Law, but otherwiſe it is in the Kings caſe. Fifthly, of a Rent ſervice, Rent charge, Common of paſture, &c. which alſo are meer demands or claims in Law. All which Littleton here and in the two next Sections following, putteth but for examples; for by the releaſe of all demands other things alſo be releaſed, as Rents ſeck, all mixt Actions, a warranty which is a Covenant real, and all other Covenants real and perſonal, Eſtovers, all manner of Commons and profits apprender, Conditions before they be broken or performed, or after, Annuities, Recognizances, Statutes Merchant, or of the Staple, Obligations, Contracts, &c. are releaſed and diſcharged.

38 H. 8. tit. Releaſes. Br. 9. 6 H. 7. 15. 13 H. 6 3, 4. 20. Aſſ. Pl. 5. 40 E. 3. 7. 2. 49 E. 3. 7. b. 50. Aſſ. Pl 6. 14 H. 4. 8. 13 R. 2. tit. Avow. 89. lib. 8. 153. Ed. Althams caſe. Lit. 170. Sect. 748. Dyer 5 El. 217.

Sect. 509.

¶ ET ſi home ad title de entry en aſcuns terres ou tenements, per tiel Releaſe ſon title eſt ale.

¶ Sed quære de hoc; car Fitz-James chiefe Juſtice de Engleterre tient le contrary, pur ceo que entre ne poit properment eſtre dit demande, P. 19. H 8. *

¶ AND if any man hath Title of entry into any lands or tenements, by ſuch a Releaſe his title is taken away.

¶ *Sed quære de hoc*; for *Fitz-James* Chief Juſtice of England holdeth the contrary, becauſe an Entry cannot be properly ſaid a Demand.

¶ *Title*

¶ *Title.* Here Title is taken in the largeſt ſenſe, including Right alſo. 34 H.8.tit. Releaſe 8,9. Chaunceys caſe, lib.8. f.153. Ed. Althams caſe.

¶ * Sed quære, &c. This is an addition, and no part of Littleton, and the opinion here cited clearly againſt Law.

Sect. 510.

¶ ET ſi home ad Rent ſervice ou Rent charge, ou Common de Paſture, &c. per tiel Releaſe de touts manners de demaunds fait al Tenaunts de la Terre, dont le ſervice ou le rent eſt iſſuant, ou en que le Common eſt, le ſervice, le Rent, & le Common eſt ale, & extinct, &c.

AND if a man hath a Rent ſervice or Rent charge, or Common of Paſture, &c. by ſuch a Releaſe of all manner of demands made to the Tenants of the Land out of which the ſervice or the rent is iſſuing, or in which the Common is, the ſervice, the Rent, and the Common is taken away and extinct, &c.

This upon that hath bẽn ſaid, nædeth no further explication.

*Sect.*511.

¶ ITem, ſi home releſſa a un aut touts manners de quarrels, ou touts controverſies, ou debates enter eux, &c. Quære a quel matter & a quel effect tiels parols ſoy extendont, &c.

ALſo, if a man releaſe to another all manner of Quarrels, or all controverſies or debates between them, &c. *Quære* to what matter and to what effect ſuch words ſhall extend themſelves, &c.

¶ *Quarrels.* Querela, a querendo, this properly concerneth perſonal actions, or mixt, at the higheſt, for the Plaintiff in them is called Querens, and in moſt of the writs it is ſaid Queritur. And yet if a man releaſe all Quereles (a mans Deed being taken moſt ſtrongly againſt himſelf) it is as beneficial as all actions, for by it all actions real and perſonal are releaſed. And by the releaſe of all quarrels, all cauſes of actions are releaſed thereby, albeit no action be then depending for the ſame. 40 E.3.47.b. Ed. Althams caſe ubi ſupra. 35 H.8. Dyer 57. 9 E.4.44. 39 H.6.9.

¶ *Quarrels*, Controverſies and Debates are Synonyma, and of one ſignification. Litis nomen omnem Actionem ſignificat, ſive in rem, ſive in perſonam ſit. If a man releaſe omnes loquelas, it is as large as omnes Actiones, for omnis actio eſt loquela; and it extendeth as well to Actions in Courts of Record, as baſe Courts; for the writ of Error ſaith, In Recordo & Proceſſu, &c. loquelæ quæ fuit inter, &c. and ſo the writ of falſe Judgment ſaith, Recordari facias loquelam, where the Judgment was given in the County Court. Omnes exactiones ſeem to be large words, for Exactio derivatur ab exigendo, and Exigere ſignifieth to enquire or demand. Lib.8.fol.153. Althams caſe. 21 H.6.16.a. F.N.B.23.18. 50.Aſſ.6.40.E.3.22. 13 R.2.Avowry 59.

Sect. 512.

¶ ITem, ſi home ó ſon fait ſoit oblige a un auter en

ALſo, if a man by his Deed be bound to another in a

¶ *Releſſa al Obligor tours Actions, &c.* The reaſon of

11 H.4.31.43.

of this caſe is. For that the debt is a thing conſiſting meerly in action; and therefore, albeit no action lieth for the debt, becauſe it is debitum in præſenti, quamvis ſit ſolvendum in futuro; yet becauſe the right of action is in him, the releaſe of all actions is a diſcharge of the debt it ſelf. (o) and ſo may an executor before Probate releaſe an action, & yet before Probate he can have no action, becauſe the right of the action is in him, and ſo it was adjudged. And ſome ſay, that an Ordinary may releaſe an action, and yet he can have none.

certaine ſumme de money a payer al Feaſt de St. Michael prochein enſuant, ſi le obligee devant le dit Feaſt releſſa al Obligor touts Actions, il ſerra barre del dutie a touts temps, & uncore il ne puiſſoit aver Action al temps de Releaſe fait.

certain ſumme of money, to pay at the Feaſt of Saint Michael next enſuing, if the Obligee before the ſaid Feaſt releaſe to the Obligor all Actions, he ſhall be barred of the duty for ever, and yet he could not have an action at the time of the Releaſe made.

(o) Trin.1.Ja.in Com. Banco, inter Middleton & Rinnot, 18 H.6. 23.b. Pl.Com.277,278. In Gresbrokes caſe per Weſton.

5 Eliz.Dyer,217.

Althams caſe, ubi ſupra.

But if a man by Deed doth covenant to build an houſe or make an eſtate, and before the Covenant broken, the Covenantee releaſeth to him Actions, Suits, and Quarrels, this doth not diſcharge the Covenant it ſelf, becauſe at the time of the Releaſe, nihil fuit debitum, there was no debt or duty, or cauſe of action in being. But in that caſe a releaſe of all Covenants is a good diſcharge of the Covenant before it be broken.

Sect. 513.

7 H.7.5.a.

¶ *Releaſe touts Actions.* This releaſe ſhall not bar the Leſſor of his Rent, becauſe it was neither debitum nor ſolvendum at the time of the Releaſe made; for if the land be evicted from the Leſſee before the Rent become due, the Rent is avoided, for it is to be paid out of the profits of the land; and it is a thing not meerly in action, becauſe it may be granted over. But the Leſſor before the day may acquit or releaſe the Rent. But if a man be bound in a Bond or by contract to another to pay an hundred pounds at five ſeveral days, he ſhall not have an action of Debt before the laſt day be paſt; and ſo note a diverſity between Duties which touch the realty, and the meer perſonalty. But if a man be bound in a recognizance to pay an hundred pounds at five ſeveral days, preſently after the firſt day of payment, he ſhall have execution upon the recognizance for that ſum, and ſhall not tarry till the laſt be paſt, for that it is in the nature of ſeveral Judgments. And ſo note a diverſity between a debt due by recognizance, and a debt due by Bond or contract. And ſo it is of a Covenant or Promiſe, after the firſt default, an action of Covenant, or an action upon the Caſe doth lie, for they are ſeveral in their nature. Laſtly, note a diverſity between Debts and Covenants, or Promiſes.

45 E.3.8.17 H.6.26. 13 H.4. Avowry 240.

50 E.3.13.b.47 E.3.24.

10 E.2.Execution 137. 16 E.2.ib.138. 16 E.3. Scire Fac.4.F.N.B.267. 9 E.3.7.

5 Mar.Action ſur le caſe Br.108.3 Mar. Dyer 117.lib.4. fol.94. Slades caſe l.5.f.81.b. Fordes caſe.

39 H.6.28.b 5 E.4.4. 2 H.4.13.12 R.2. Releaſe 29.

¶ MEs ſi home leſſa terre a un auter p terme dun an, rendant a luy al feaſt de S. Michael prochein enſuant 40. s. & puis devãt meſm̃ le feaſt il releſſa al leſſee touts act, unt apres meſm̃ l'feaſt il avera act de Debt pur non payment de les 40s. nient obſtant le dit releas. Stude cauſam diverſitatis enter les deux caſes.

But if a man letteth land to another for a year, to yield to him at the Feaſt of St. Mich. next enſuing 40s. and afterwards before the ſame feaſt he releaſeth to the Leſſee all actions, yet after the ſame feaſt he ſhall have an action of debt for the non-payment of the 40s. notwithſtanding the ſaid Releaſe. *Stude cauſam diverſitatis* between theſe two caſes.

If a man hath an Annuity for term of years, for life, or in fee, and he before it be behind doth releaſe all actions, this ſhall not releaſe the Annuity, for it is not meerly in action, becauſe it may be granted over.

Sect.

Sect. 514.

ITem, ou home voille ſur briefe de Droit, il covient que il counta del ſeiſin de luy, ou de ſes anceſtors, & aury q̄l' ſeiſin fuit en temps de meſme le Roy come il counta en ſon count: Car ceſt un ancient ley uſe, come appiert per l' Report dun plee en le Eire de Nottingham, titulo droit en Fitzherbert, cap. 26. en tiel forme que enſuiſt. John Barre port ſon briefe de Droit envers Reynold de Aſſington, & demanda certaine tenements, &c. ou le miſe eſt joyne en le bank, & original & le Proces fueront demandes devant Juſtices errants, ou les parties viendront, & les 12. Chivaliers fieront lour ſerement ſans challenge des parties deſire allowes, pur ceo que election fuit fait per aſſents des parties, ove les quater Chivaliers, & le ſerement fuit tiel, Que jeo verity dirr, &c. le quel R. de A. ad plus mere droit a tener les tenements que John Barre demanda vers luy per ſon briefe de Droit, ou John de

ALſo, where a man will ſue a Writ of Right, it behoveth that he counteth of the ſeiſin of himſelf, or of his anceſtors, and alſo that the ſeiſin was in the ſame Kings time, as he pleadeth in his plea. For this is an antient Law uſed, as appeareth by the report of a plea in the Eire of *Nottingham, tit. droit. in Fitzherbert, cap. 26.* in this form following. *John Barre* brought his Writ of Right againſt *Reynold* of *Aſſington*, and demanded certain Lands, &c. where the miſe is joyned in bank, and the original and the Proceſs were ſent before the Juſtices errants, where the parties came, and the twelve Knights were ſworne without challenge of the parties, to be allowed, becauſe that choice was made by aſſent of the parties, with the four Knights, and the Oath was this: That I ſhall ſay the truth, &c. whether *R.* of *A.* hath more meer right to hold the tenements which *John Barre* demandeth againſt him by his Writ of Right, or *John* to have

¶ *IL covient que il counta del ſeiſin de luy ou de ſes anceſtors.* For if neither he nor any of his Anceſtors were ſeiſed of the Land, &c. within the time of limitation, he cannot maintain a writ of Right, for the ſeiſin of him of whom the Demandant himſelf purchaſed the Land, &c. availeth not. For the time of limitation, See the Statute of 32 H. 8. cap. 2. Vide Sect 170.

And ſo it is in a writ of right of Advowſon.

¶ *Auxy que le ſeiſin fuit en temps de meſme le roy come il counta.* Hereby it appeareth, that not only a ſeiſin (as hath been ſaid) is requiſite, but alſo that the ſeiſin be had in the time of the ſame king according to his Count. F.N.B. 30. a. 2 E. 3. 27. Littleton 112. 1.

¶ *Report.* Cometh of the Latine word Reportare, a re & porto, id eſt, referre, a re & fero. And in the Common Law, it ſignifieth a publike relation, or a bringing again to memory caſes judicially argued, debated, reſolved, or adjudged in any of the Kings Courts of Juſtice, together with ſuch cauſes and reaſons as were delivered by the Judges of the ſame, and in this ſenſe Littleton uſeth the word in this place.

¶ *En le Eire de Nottingham.* Eire, Iter. And it ſignifieth the Court of the Juſtices in Eire, and thereupon they were called Juſticiarii Itinerantes, in reſpect that the Juſtices reſiding at weſt-

weſtminſter were called Juſticiarii reſidentes, and were much like in this reſpect to the Juſtices of Aſſiſe at this day, although for authority and manner of proceeding (whereof you ſhall read (q) in the antient Authors of the Law) farr different. And as the power of the Juſtices of Aſſiſes by many Acts of Parliament, and other Commiſſions increaſed, ſo theſe Juſtices Itinerant by little and little vaniſhed away. And it is certain, that the Authority of Juſtices of Aſſiſes Itinerant through the whole Realm, and the Inſtitution of Juſtices of Peace in every County being duely performed, are the moſt excellent meanes for the preſervation of the Kings peace, and quiet of the Realm, of any other in the Chriſtian world.

(q) Mirror. c. 2. Sect. 3. & Sect. 15. & ca. 4. le office des Juſtices in Eire. Glanv. l. 9. cap. 11. l. 8. cap. primo. Britton fol. 1. b. 78. &c Bract. lib. 3. fol. 115. &c. Flet. l. 1. ca. 15. &c. 4 E. 3. 32. 5 E. 3. 3. 2 E. 3. 21. 15 H. 7. 5 Vid. Sect. 442, 233, 234.

¶ *De Nottingham.* This ſhould be Northamptor, according to the Original.

This report whereof Littleton here maketh mention, you ſhall finde an abſtract of it in 3 E. 3. ſince Littletons time, put in print by Fitzherbert when he was Serjeant in 11 H. 8. and is not in the Reports or Books at large. And yet here it appeareth, that they be of great authority, and vouched by Littleton himſelf, for the proof of a main point in Law. And hereby it alſo appeareth, how neceſſary it is to read Records and Pleas reported or Recorded, though they were never printed. For thoſe and the like Records are Veritatis & Vetuſtatis veſtigia.

3 E. 3. Tit. Droit. F. 26.

¶ *Tit. droit, in* Fitzherbert 26. is

aver eux, ſicome il demaund, & pur rien dirra que le verity ne dirra, ſicome moy ayde Dieu, &c. ſans dire a lour eſcient. Et tiel ſerement ſerra fait en attaint, & en Battail, & en ley gager, car eux mittont cheſcun choſe a fine. Mes John Barre counta del ſeiſin dun Raſe ſon anceſtor, en temps le Roy Henry, & Reynolde ſur le miſe joyne tendiſt demy mark pur le temps &c. Et ſur ceo Herle Juſtice dit al grand aſſiſe, apres ceo que ils fueront charges ſur le mere Droit, Vous gentes, Reynold donaſt demy marke al Roy pur le temps, al entent que ſi vous troves que l'anceſtor John ne fuit pas ſeiſie en le temps que le demaundant ad count, vous nenquires plus avant del droit, & pour ceo vous nous dires, le quel launceſtor John, Raſe per noſme, fuit ſeiſie en temps le Roy Henry, come il ad count, ou non. Et ſi vous troves que il ne fuit ſeiſie en cel temps, vous nenquires nient pluis, & ſi vous troves que il fuit ſeiſie, donques enquires ouſter del briefe. Et puis le

them as he demandeth, and for nothing to let to ſay the truth, ſo help me God, &c. without ſaying, to their knowledge. And the like oath ſhall be made in an Attaint, and in Battail, and in wager of Law, for theſe doe bring every thing to an end. But *John Barre* counted of the ſeiſin of one *Ralfe* his Anceſtor in the time of King *Henry*, and *Reynold* upon the miſe joyned tendred halfe a marke for the time, &c. And hereupon *Herle* Juſtice ſaid to the grand aſſiſe after that they were charged upon the meer right, You good men, *Reynold* gave half a Mark to the King for the time, to the intent that if you find that the anceſtor of *John* was not ſeiſed in the time that the demandant hath pleaded, you ſhall enquire no further upon the right, and for this, you ſhall tell us whether the anceſtor of *John* (*Ralf* by name) were ſeiſed in K. *Henries* time, as he hath pleaded, or not. And if you find that he was not ſeiſed in this time, you ſhall enquire no more; and if you find that he was ſeiſed, then you ſhall enquire further of the writ. And after the grand Aſſiſe came in with their

graund

graund Aſſiſe reviendroit ove lour Verdict, & diſont que Rafe ne fuit pas ſeiſie en temps le Roy H. per que fuit agard, que Reynold tiendroit les tenements vers luy demandes, a luy & ſes heirs quites de John Barre & ſes heires a remnant. Et John en le mercie, &c. Et le cauſe pur que jeo aye monſtre icy a toy, mon fits, ceſt plæ, eſt pur prover le matter precedent que eſt dit en briefe de Droit, &c. car il ſemble per ceſt plée, que ſi Reynold navoit pas tendue demy mark pur enquirer del temps, &c. donques le graund Aſſiſe duiſſoit eſtre charga tantſolemẽt del mere droit, & nemy del poſſeſſion, &c. Et iſſint q̃ touts foits en briefe de Droit, ſi le poſſeſſion dont le demandant counta ſoit en temps le Roy, coñ il avoit coũt, donques le charge del grande aſſiſe ſerra tantſolement ſur le mere droit, coment que le poſſeſſion fuit encounter le ley, come il eſt dit adevant en ceſt Chapter, &c.

verdict, and ſaid, that *Ralfe* was not ſeiſed in the time of King *Henry*, whereby it was awarded that *Reynold* ſhould hold the tenements demanded againſt him, to him and his heirs quite of *John Barre* and his heires to the remnant. And *John* in mercy, &c. And the reaſon why I have ſhewed to thee, my Son, this Plea, is, to prove the matter precedent which is ſaid in a Writ of right; for it ſeemeth by this Plea, that if *Reynold* had not tendred the half mark to enquire of the time, &c. then the grand Aſſiſe ought to bee charged only to enquire of the meer right, and not of the poſſeſſion, &c. And ſo always in a Writ of Right, if the poſſeſſion whereof the demandant counteth bee in the Kings time, as he hath pleaded, then the charge of the grand aſſiſe ſhall be only upon the meer right, although that the poſſeſſion were againſt the Law, as it is ſaid before in this Chapter, &c.

of a new addition; and therefore though it be true; yet not to be allowed.

¶ *Et le originall & le proces fuer demande devant Juſtices Itinerants.* For it is to be underſtood, that all Pleas either in the realty or perſonalty that were begunne and not determined before Juſtices in Eire, were adjorned by them into the Court of Common Pleas. 4 E.3.41. Percivals caſe. Mirror. Glanvil. Bracton. Fritton Fleta. } ubi ſupra.

¶ *Les 12. Chivaliers ſieront lour ſerement ſauns challenge, &c. pur ceo que le election fuit fait per aſſent des parties ove les 4. Chivaliers.*

Here are four things to be obſerved. 30 E.1. tit. challenge 172.

First, That omnis conſenſus tollit errorem, and againſt his own conſent he cannot challenge the twelve. 21 E.4.77. 9 E.3.1. 44 E. 3. 6. 11 H.6.13.

Secondly, That the four Knights Electors of the grand Aſſiſe are not to be challenged, for that in Law they be Judges to that purpoſe, and Judges or Juſtices cannot bee challenged. And that is the reaſon that Noblemen that in caſe of high Treaſon are to paſs upon a Peer of the Realm cannot be challenged, becauſe they are Judges of the fact, and Magna Charta, ſaith, per judicium parium ſuorum. 4. E. 3. 13. Magna Charta cap.29.

Thirdly, That the twelve before any aſſent may be challenged before the four Knights electors, but after aſſent or return of the pannel before the Juſtices, there ſhall be no challenge to the pannel, nor to the polles. 39 E.3.2.7 H.4.20.

Fourthly, If there be not four Knights for Electors in that County, the next to them in that County ſhall be taken. Ne curia Regis deficeret in Juſtitia exhibenda. 7 H.4.20.

¶ *Sauns dire a lour eſcient.* And here it appeareth, that where the Judgment is final, there the Oath of the grand Aſſiſe or Jury is abſolute, and not to their knowledge, as here

here in the Writ of Right, in the Attaint, and in wager of Law; for the judgment in every of theſe three is final.

Vide Sect. 193.

¶ *Le miſe eſt joyne.* Miſe is a word of art appropriated only to a Writ of Right, ſo called becauſe both parties have put themſelves upon the meer right to be tried by grand Aſſiſe or by Battail: ſo as that which in all other actions is called an Iſſue, in a writ of right in that caſe is called a miſe. And in this ſenſe Littleton taketh it here. But in a writ of right if a Collateral point is to be tried, there it is called an Iſſue, and is derived of this word (Miſſum) becauſe the whole cauſe is put upon this point. It is alſo taken for expences, as Miſæ & Cuſtagia. And ſometime it ſignifieth a cuſtomary grant to the King, or Lords Marchers of Wales by their Tenants at their firſt coming to their Lands.

Regiſtrum.

32 H. 8 cap. 13. 3 E. 6. cap. 36.

10 E 3.20.31 E.3.droit. 21. 22. E.3. 17. 18 H.3. droit. 62. 33 E. 1. ib. 39. Lamb Explicat verborum, verbo Mancuſa.

¶ *Tender di marke al Roy.* Maſter Lambard ſaith, That Mancuſa & Marca Saxonice Mancup. 7. Meare' Nummus 30 valens denarios. And this Meare now called a Mark, being an old Saxon word, is the cauſe that England moſt commonly reckoned by Marks. Libra, Saxonice is a pund, a pondo, which is called ſo until this day. Solidus qui apud nos eſt pars libræ viceſima denarios per id temporis continebat quinque, nunc duodecem, and Scilling is a Saxon word, and with us uſed to this day. Penny Saxonice Pennig, Latine Denarius, but the value of theſe have not been always one.

F. N. B. 3 .c. 31. E. 3. droit. 1 ,.6 E. 3. ib. 14.

In a writ of Right of Advowſon brought by the King, the Tenant ſhall not tender the Di. mark, becauſe Nullum tempus occurrit Regi; and therefore the King ſhall alledge, that he or his Progenitor was ſeiſed, without ſhewing any time.

Mirror ca. 1 Sect. 17. ca. 3. de Attaint. ca. . Sect. 1. Bract. f. 288, 289, &c. 292. Brit. f. 241, 245, 246, &c. Flet. l. 5 ch. 21. & 34. Forteſcue. ca. 26.

¶ *En attaint.* Attinctus, is a writ that lieth where a falſe Verdict in a Court of Record, upon an Iſſue joyned by the parties, is given. And of antient writers it is called Breve de convictione; And is derived of the participle Tinctus, or Attinctus; for that if the petty Jury be attainted of a falſe Oath, they are ſtained with perjury, and become infamous for ever, for the judgment at the Common Law in the Attaint importeth eight great and grievous puniſhments, 1. Quod amittant liberam legem in perpetuum, that is, he ſhall be ſo infamous, as he ſhall never be received to be a witneſs, or of any Jury. 2. Quod foris-faciant omnia bona & catalla ſua. 3. Quod terræ & tenementa in manus Domini Regis capiantur. 4. Quod uxores & liberi extra domus ſuas ejicerentur. 5. Quod domus ſuæ proſtrentur. 6. Quod arbores ſuæ extirpentur. 7. Quod prata ſua arentur. Et 8. Quod corpora ſua carceri mancipentur. So odious is perjury in this caſe in the eye of the Common Law, and the ſeverity of this puniſhment is to this end, Ut pœna ad paucos, metus ad omnes perveniat, for there is Miſericordia puniens, and there is Crudelitas parcens: And ſeeing all tryals of real, perſonal, and mixt actions, depend upon the oath of 12 men, prudent Antiquity inflicted a ſtrange and ſevere puniſhment upon them, if they were attainted of perjury.

But ſince Littleton wrote, a Statute hath been made in mitigation of the ſeverity of the Common Law, in caſe when the petty Jury is attainted, and therefore it is taken by equity. For where the Statute ſaith, that the party grieved ſhall have an Attaint againſt the party which ſhall have judgment upon the Verdict, yet an Attaint ſhall be maintained upon that Statute againſt the Executors of the party, Et ſic de ſimilibus. (a) But ſee the Statute and Authorities quoted in the Margent. Only I thought good to obſerve three things.

(a) 23 H. 8. cap. 3. 3 El. Dyer 201. 7 E. 6. lib. 41. 2 Mar. ib. 129. 7 El. lib. 235. 24 H. 8 Br. Attaint. 96. 4 Mar. ib. 127. 20 . 7. 5. 42 E. 3. 26. F. N. B. 107. D. Mirror, c. 1. Sect 3. e 3. Sect. ca. 5. Sect. 1, Br l. 3. 141. b. & f. 320, 331. Glanvil. l. 2. ca. 3, 5. Lib. . ca. 9. Lib. 4. ca. 1, Brit. f. 40, 41, 43, 81, 173, 190 Fleta lib. 1, ca. 32 & lib. 2. cap. 48.

First, that no Attaint can be maintained upon this Statute, but between party and party.

Secondly, that no Conuſance can be granted upon any Attaint, becauſe all Attaints are to be taken either before the King in his Bench, or before the Juſtices of the common place, and in no other Courts, &c.

Thirdly, conſider what Pleas may be pleaded in an attaint by force of this Act, and what not.

(b) 4 E. 3. 41. 17 E. 3. 19 H. 6. 35. 5 H. 4. 3. 30 E. . 20. 29 E. 3. 12. 42 H. 3. 41. Stan. 174, 178 17 El. Dyer. 9 E. 4. 35. 1 H. 6. 6. 3 H. 6. 55. Vid. l. 9. f. 32. b. & 33. b. Mirror ca. 4. Del Office des Juſtices, &c. Glanvil. l. . cap. 9. lib. 8, cap. 8.

¶ *En battaile.* Duellum, Monomachia, and it ſignifieth in the Common Law a tryal by ſingle fight, by battle or combate, Monomachia. (b) And in the writ of Right neither the Tenant or Demandant ſhall fight for themſelves, but find a Champion to fight for them: becauſe if either the Demandant or Tenant ſhould be ſlain, no judgment could be given for the Lands or Tenements in queſtion. But in an appeal the Defendant ſhall fight for himſelf, and ſo ſhall the Plaintiff alſo; for there if the Defendant be ſlain, the Plaintiff hath the effect of his ſuit, that is, the death of the Defendant; the order and ſolemnity whereof you may read in our antient and later books. And this the Law did inſtitute, when the Tenant failed of his witneſſes, or Evidences, or other proofs; and the preſumption of Law is, that God will give victory to him that hath right.

¶ *Ley gager.* Vadiare Legem, and there is alſo facere Legem, by making of his Law. That is, to take an oath, (for example) that he oweth not the debt demanded of him upon a ſimple Contract, nor any penny thereof. And it is called wager of Law, becauſe of antient

time

time he put in ſurety to make his Law at ſuch a day, and it is called making of his Law, becauſe the Law doth give ſuch a ſpecial benefit to the Defendant to bar the Plaintiff for ever in that caſe. (f) But he ought to bring with him eleven perſons of his neighbours that will avow upon their oath, that in their conſciences he ſaith truth, ſo as he himſelf muſt be ſworn de fidelitate and the eleven De credulitate. Lib.10.cap.5. Bract.li.3.tract.2.ca.37. & lib.5.f.410. Britton fol.56. Fleta,lib.2. ca.56,63.

And wager of Law lieth not when there is a ſpeciality, or Deed to charge the Defendant, but when it groweth by word, ſo as he may pay or ſatisfie the party in ſecret, whereof the Defendant having no teſtimony of witneſſes may wage his Law, and thereby the Plaintiff is perpetually barred, as Littleton here ſaith, for the Law preſumeth that no man will forſwear himſelf for any worldly thing; but mens conſciences do grow ſo large (ſpecially in this caſe paſſing with impunity) as they chooſe rather to bring an Action upon the caſe upon his promiſe, wherein (becauſe it is Treſpaſſe ſur le caſe) he cannot wage his Law, then an action of debt. (f)Magna Charta, c.25. Bracton lib.5.f 410. Fleta,lib.2.ca.63. Diverſities des Courts. 33 H.6.8.

A man Outlawed or attainted in an Attaint, or upon an Indictment of conſpiracy, or of perjury, or otherwiſe, whereby he become infamous ſhall not wage his Law. 32 H.6.32.

A man under the age of 21 years ſhall not wage his Law, but a Feme covert together with her husband ſhall wage her Law. 11 H.6.40.15 E.4.2.

When the ſuite is for the King, or for his benefit, as in a Quo minus, the Defendant ſhall not wage his Law. 32 H.6.24.8 H.5.Ley 66 35 H.8 Ley.Br.101.

If an Infant be Plaintiff, the Defendant ſhall not wage his Law. An Alien ſhall wage his Law in that language he can ſpeak. 26 F.3.63.b. 21 H.6.42.

In no caſe where a contempt, treſpaſs, deceit, or injury is ſuppoſed in the Defendant, he ſhall wage his Law, becauſe the Law will not truſt him with an oath to diſcharge himſelf in thoſe caſes, only in ſome caſes in Debt, Detinue, Account, the Defendant is allowed by Law to wage his Law. 44 E.3.32.18 E.3.4. 24 E.3 39.

In an action of account againſt a Receiver upon a receipt of money, by the hand of another perſon for account render (unleſs it be by the hands of his wife, or his Commoigne) the Defendant ſhall not wage his law, becauſe the receipt is the ground of the action, which lieth not in privity between the Plaintiff and Defendant, but in the notice of a third perſon, and ſuch a receipt is traverſable. (d) But in an action of debt upon an Arbitrement, or in an Action of Detinue by the bailment of anothers hand, the Defendant ſhall wage his Law, becauſe the Debet and the Detinet is the ground of thoſe actions; and the contract or Bailment though it be by another hand, is but the conveyance, and not traverſable. In an action of account againſt a Bayliff of a Mannor, the Defendant cannot wage his law, becauſe it foundeth in the realty. In an action of Debt which concerns the realty, as for debt for a Rent upon a leaſe for years, or an action of Detinue for detaining an Indenture of a leaſe for years, the Defendant ſhall not wage his Law; much leſs for Charters or Deeds which concern inheritance. 15 E.4.16,10 E.4.5. (d)33 H.6.24.13 H.7. 32.2.2 H.6.41.1 H.6.1. 6.1 H.6.11. 18 H.8.3. 3 E.3.28.11 H.4.14. 5 H.5.13. 22 H.6.30. 14 E.3. Ley 63. 30 E.3. 19. 9.E.4.1. 34 H.8. Ley Gager Br. 97.

In an action of Debt for a Fine or Amerciament in a Leet, the Defendant ſhall not wage his law, becauſe the Leet is a court of Record; but in an action for Debt for an Amerciament in a Court Baron the Defendant ſhall wage his Law, for that is no Court of Record. 10 H.6.7. 1 H.7.25. 6.El.Bendloes.

In Debt upon an account before Auditors the Defendant ſhall not wage his Law, and this by conſtruction of the Statute of W. 2. cap. 11. which giveth them great authority, and ſaith, Coram Auditoribus; and therefore of an account before one Auditor the law lieth. So if the Lord before Auditors be found in ſurpluſage, in an action of Debt brought by the Accomptant, the Lord ſhall not wage his Law by conſtruction alſo upon this Statute, as an incident riſing upon the account. 9 H.5.1.8 H.6.15. 32 H.6.35.38 H.6.6. 14 H.6.61.38 H.6.6.

In an action of Debt by a Gaoler againſt the Priſoner for his victuals, the Defendant ſhall not wage his law, for he cannot refuſe the Priſoner, and ought not to ſuffer him to die for default of ſuſtenance, otherwiſe it is for taking a man at large. 28 H.6.4.19.H.6.20. 22 H.6.6.13.39 H.6.18

In an action of Dect brought by an Attorney for his fees, the Defendant ſhall not wage his law, becauſe he is compellable to be his Attorney. And ſo if a ſervant be retained according to the Statute of labourers, in an action of Debt for his Salary, his Maſter ſhall not wage his Law, becauſe he was compellable to ſerve; otherwiſe it is, if he be not retained according to the Statute. 21 H.6.4. 38 H.6.23. 39 H.6.18

Whereſoever a man is charged as Executor or Adminiſtrator, he ſhall not wage his Law, for no man ſhall wage his law of another mans Deed; but in caſe of a Succeſſor of an Abbot, for that the houſe never dieth. 3 H.6.38.1 H.7.25. 13 H.7.

In debt upon a penalty given by Statute, the Defendant ſhall not wage his law. There is another kind of wager of Law in a real action, of Non ſummons, but thereof Littleton ſpeaketh not. 10 H.7.21.

¶ *Et ſur ceo* Herle *Juſtice dit. &c.* Hereby it appeareth that it is the office of

of the Judges to inſtruct the grand Aſſiſe or Jury in points of Law, for as the grand Aſſiſe or other Jurors are triers of the matters of fact. Ad Quæſtionem facti non reſpondent Judices, ſo ad Quæſtionem juris non reſpondent Juratores. And accordingly the Judge in this caſe directed the grand Aſſiſe, viz. if they found that, &c.

Glanv li. 12 cap. 1, &c. Bracton li. 5. fol. 328.

¶ *Per que fuit agard.* Here are two things to be obſerved. Firſt, the form of a Judgment final. Secondly, that a Judgment final is to be given in this particular caſe. For the form of the final judgment for the tenant is here expreſſed, that the Tenant ſhall hold the Tenements demanded againſt him, to him and his heirs quite of the Demandant and his heirs for ever, and the Demandant in mercy. Quod tenens teneat terram illam ſibi & hæredibus ſuis in pace verſus petentem, & hæredes ſuos in perpetuum.

Lib. 5. f. 85 Penrins caſe.

34 E 3. Judgm. 156. ad judge accord. 13 H. 4. Judgm. 245. 10 H. 6. 8. 20 H. 6. 38. b. 21 H. 6. 34. b 20 H. 8. 8. b. 1 Mar. Dy. 98. li. 5. f. 85. Penrins caſe, F. N. B. 5. 11. 31.

For the ſecond point ſeeing the miſe is joyned upon the meer right, albeit the verdict of the grand Aſſiſe be given upon another point, yet judgment final ſhall be given. And ſo it is if the Tenant after the miſe is joyned make default, or confeſs the action, or if the Demandant be Non-ſuite, and yet in none of theſe caſes they of the grand Aſſiſe gave their verdict upon the meer right.

¶ *Come eſt avantdit*, Vid. Sect. 478.

CHAP. 9. Of Confirmation. *Sect.*515.

Bract. li 2 fol. 12. b. & 58 59. Brit. 235.

¶ HEre firſt our Author ſhews what a Confirmation is.

Confirmation. Confirmatio commeth of the Verb * Confirmare, quod eſt firmum facere; & therefore it is ſaid, That Confirmatio omnes ſupplet defectus, licet id quod actum eſt ab initio, non valuit. A Confirmation is a conveyance of an eſtate or right in eſſe, whereby a voidable eſtate is made ſure and unavoidable; or whereby a particular eſtate is encreaſed.

* Lit. pag ſequen.

Bract. l. 2. 38.

¶ FAit de Confirmation ē commune-ment en tiel form, ou a tiel effect, Noverint univerſi, &c. me A. de B. ratificaſſe, approbaſſe, & confirmaſſe, C. de D. ſtatum & poſſeſſionem, quos habeo de, & in uno meſſuagio, &c. cum pertin' in F. &c.

A Deed of Confirmation is commonly in this form, or to this effect: *Know all men, &c. That I* A. *of* B. *have ratified, approved, and confirmed to* C. *of* D. *the eſtate and poſſeſſion which I have, of and in one Meſſuage*, &c. *with the Appurtenances in* F. &c.

Bract. li. 2. fol 27, 58. 38 H. 6. 54. 37. Pl. Com. Count. de Leiceſters caſe.

A Confirmation doth not ſtrengthen a void eſtate. Confirmatio eſt nulla ubi donum præcedens eſt invalidum, & ubi donatio nulla omnino nec valebit confirmatio, for a confirmation may make a voidable or defeaſible eſtate good, but it cannot work upon an eſtate that is void in Law. Non valet confirmatio, niſi ille qui confirmat ſit in poſſeſſione rei, vel juris unde fieri debet confirmatio, & eodem modo niſi ille cui confirmatio fit, ſit in poſſeſſione. And another ſaith, (c) Confirmare eſt id quod prius infirmum fuit firmare. Et donationum alia incepta, & defectiva, & poſt tempus confirmata; confirmatio enim omnem ſupplet defectum, poterit enim eſſe in pendenti donec per ratihabitionem hæredis cum ad ætatem pervenerit roboretur.

10 E. 2. Confirm. 24. 32 E. 3. 9. (c) Fleta lib 3. cap. 14. & lib 3 c. 3.

¶ Ratificaſſe. Ratificare eſt ratum facere, and is equivalent to Confirmare, which as hath bēn bēn ſaid, is firmum facere.

44. Aſſ. 3.

¶ Approbaſſe cometh of Ad and probo, which is to make perfect and good.

¶ Confirmaſſe. Here is to be obſerved, That there be two kinds of Confirmations, viz. Confirmations expreſs or in Deed, whereof Littleton hereafter ſpeaketh in this Chapter. Quælibet confirmatio, aut eſt perficiens, creſcens, aut diminuens, and all of theſe Littleton putteth examples in this Chapter. And hereof Fleta ſaith, Charta autem de confirmatione eſt illa quæ alterius factum conſolidat & confirmat, & nihil novi attribuit, quandoque tamen confirmat & addit.

Lib. 9. 142. Beamonds caſe. Flet. l. 3. cap. 14.

Sect.

Sect. 516.

¶ ET en ascũ case un fait de confirmation est bone & available, lou en tiel case un fait de Release nest passe bone, ne available. Sicome jeo lessa Terre a un home pur terme d'sa vie, l' quel lessa mesm̃ la terre a un auter p terme de xl. ans, per force de quel il est en possession. Si jeo p mon Fait confirme lestate del Tenant a terme dans, & puis le tenant a terme de vie mozust durant le terme des ans, jeo ne puis enter en la Terre durant le dit terme.

AND in some case a Deed of Confirmation is good and available, where in the same case a Deed of Release is not good nor available. As if I let land to a man for term of his life, who letteth the same to another for term of forty years, by force of which he is in possession: if I by my Deed confirm the Estate of the Tenant for years, and after the Tenant for life dieth during the term of years, I cannot enter into the Land during the said term.

¶ LIttleton in this Chapter putteth eight diversities between a Confirmation and a Release, and thereof for illustration here he putteth two cases in this and the next Section, which upon that which hath been said in the precedent Chapters, is sufficiently explained. Only in both these cases this is to be observed, That where a Confirmation, shall enlarge an estate, there privity is required, as well as in the case of the release, as by many examples which Littleton puts in this Chapter appeareth. And note, here is the first case wherein a release and a Confirmation do differ. 49 E. 3. 32. 9 H. 6. Tit. Release 44.

Lessee for life made a Lease for thirty years, and after the Lessor and Lesse for life made a Lease for sixty years to another, which Lease for sixty years the Lessor did first confirm, and after the Lessor confirmed the Lease for thirty years, and after Tenant for life died within the thirty years, and it was adjudged, (d) That the lease for thirty years was determined by the death of Lesser for life, and that the Lesser for sixty years might enter; for that albeit the lease for sixty years was the latter in time, yet was it of greater force in law, for that the Lessor who hath power to confirm which of them he would, did first confirm the second lease. (d) Inter Vnwel & Lodge, tem. Reg. Eliz.

In this Chapter is also to be observed eight Cases, wherein a release and a Confirmation have the like operation in Law.

Sect. 517.

¶ VNcore si jeo per mon fait de Release avoy releas al tenant a terme dans en la vie le tenant a terme de vie, cel release serra voyd, pur ceo que adonques ne fuit ascun privity perent moy & le tenant a terme dans, car release nest available al tenant a terme dans, mes lou est un privitie perent luy & celuy q̃ releasast.

YEt if I by my deed of Release had released to the Tenant for years in the life time of the Tenant for life, this release shall be void, for that then there was not any privity between me and the Tenant for years: for a release is not available to the Tenant for years, but where there is a privity between him and him that releaseth.

This belongeth to the first diversity between a Release and a Confirmation.

Sect. 518.

¶ HEre is the second diversity betwixt a Release and a Confirmation. But if the Disseisor make a lease for years to begin at Michelmas, and the Disseisee confirm his estate, this is void. because he hath but interesse termini, and no Estate in him, whereupon a Confirmation may enure.

4 H.10. by Read. 22 E.4.36.

¶ EN meisme l'maner est, si jeo soy disseisie, & le Disseisor fait un Lease a un auk pur terme dans, si jeo releasa al termor, ceo est voyde, mes si jeo confirma lestate l'termor, ceo est bone & effectual.

IN the same manner it is, if I be disseised, and the disseisor make a lease to another for term of years, if I release to the Termor, this is void: but if I confirm the Estate of the Termor, this is good and effectual.

Sect. 519.

¶ ITem, si jeo soy disseisee, & jeo confirma lestate le Disseisor, il ad bone & droiturel estate en Fee simple, comẽt que en le fait de confirmation nul mention est fait de ses heires, pur ceo que il avoit Fee simple al temps de Confirmation. Car en tiel case, si l'i disseisee confirma lestate le disseisor, A aver & tener a luy & a ses heires de son corps engendres; ou a aver & tener a luy pur l'terme de sa vie, uncore le disseisor ad fee simple, & est seisie en son demesne come de fé, pur t̃ que quant cõ estate fuit confirm̃, donque il avoit fee simple, & tiel fait ne poit changer son Estate, sans entry fait sur luy, &c.

ALso, if I be disseised, and I confirm the Estate of the Disseisor, he hath a good and rightful estate in Fee simple, albeit in the Deed of Confirmation no mention be made of his heirs, because he had Fee simple at the time of the Confirmation. For in such case, if the Disseisee confirm the state of the Disseisor, To have and to hold to him and his heirs of his body engendred; or to have and to hold to him for term of his life, yet the Disseisor hath a fee simple, and is seised in his Demesne as of Fee, because when his estate was confirmed he had than a Fee simple, and such Deed cannot change his estate, without entry made upon him,

39 H.6.22.6 E.3. Confirm. 4.

¶ HEre is the first case wherein the release and Confirmation doth agree, viz: a Confirmation to a Disseisor in tail, or for any particular estate is of the like force as a release to a Disseisor, during such estate, which in both cases is good for ever. In the same manner it is, if the Disseisor make a gift in tail, and the Disseisee confirm the Estate of the Donee for the life of the Donee, this confirmation inures to the whole estate tail; for a Confirmation can make no fraction of any estate, to extend but to part of the Estate only: Et sic de cæteris.

Sect.

Sect. 520.

EN meſme le maner eſt, ſi ſon eſtate ſoit confirme pur terme de un jour, ou pur terme dun heure, il ad bon eſtate en fée ſimple pur ceo que ſon eſtate en Fée ſimple fuit un foits confirm. Quia confirmare, idem eſt, quod firmum facere, &c.

IN the ſame manner it is, if his eſtate be confirmed for term of a day, or for term of an hour, he hath a good eſtate in fee ſimple, for this, that his eſtate in fee ſimple was once confirmed. *Quia confirmare, idem eſt, quod firmum facere,* &c.

HEre is the ſecond caſe wherein the Releaſe and Confirmation do agree. The Reaſon of this is, for that the Diſſeiſor hath a Fee ſimple; and therefore if his eſtate be confirmed but for an hour, it is good for ever, becauſe (ſaith Littleton) Confirmare, idem eſt; quod firmum facere.

Nota, a diverſity between a bare aſſent without any right or intereſt, and an aſſent coupled with a right or intereſt; and therefore an Attornment cannot be made for a time, nor upon Condition; but if the Parſon make Leaſe for an hundred years, the Patron and the Ordinary may confirm fifty of the years, for they have an intereſt, and may charge in time of vacation. And ſo if a Diſſeiſor make a leaſe for an hundred years, the Diſſeiſee may confirm parcel of thoſe years; but then it muſt be by apt words, for he muſt not confirm the leaſe, or demiſe, or the eſtate of the Leſſee, for then the addition for parcel of the term ſhould be repugnant when the whole was confirmed before, but the Confirmation muſt be of the land for part of the term. So may the Confirmation be of part of the land, as if it be of forty acres, he may confirm twenty, &c. So if tenant for life make a leaſe for an hundred years, the Leſſor may confirm either for part of the term, or for part of the Land. But an eſtate of Freehold cannot be confirmed for part of the eſtate, for that the eſtate is intire, and not ſeveral, as years be.

Lib. 5. fol. 81. Pords caſe.

Sect. 521.

ITem, ſi mon Diſſeiſor fait un leas a terme de vie, le remainder ouſter en fée, ſi jeo releas al tenant a terme de vie, ceo urera a celuy en le remainder. Mes ſi jeo confirm leſtate d le tenant a terme de vie, uncore apres ſon deceaſe jeo puis bien enter, pur ceo que riens eſt confirme forſque leſtate le tenant a term de vie, iſſint que apres ſon deceaſe, jeo puis enter. Mes quand jeo releſſa

ALſo, if my Diſſeiſor maketh a Leaſe for life, the remainder over in fee, if I releaſe to the Tenant for life, this ſhall enure to him in the remainder. But if I Confirm the Eſtate of the Tenant for terme of life, yet after his deceaſe I may well enter, becauſe nothing is confirmed but the Eſtate of the Tenant for life, ſo that after his de-

HEre is the third caſe wherein the Releaſe and Confirmation differ; for the Confirmation to the Tenant for life doth not enure to him in the remainder.

And ſo it is when the ſeveral eſtates be in one perſon, as if the Diſſeiſor make a gift in taile, the remainder to the right Heirs of Tenant in Taile, if the Diſſeiſee confirme the Eſtate in taile, it ſhall not extend to the Fee ſimple, no more than if the Diſſeiſor had made a gift in taile, the Remainder for life, the Remainder to the right Heirs of Tenant in tail, this extendeth onely to the eſtate taile, and not to

to the remainder for life, nor to the remainder in fee. But if the Diſſeiſor make a leaſe for life to A. and B. and the Diſſeiſee confirm the eſtate of A. B. ſhall take advantage thereof, for the eſtate of A. which was confirmed was joynt with B. and in that caſe the Diſſeiſee ſhall not enter into the Land, and devеſt the moiety of B.

If the Diſſeiſor infeoffe A. and B. and the heires of B. if the Diſſeiſee confirm the eſtate of B. for his life, this ſhall not onely extend to his companion, as hath been ſaid, but to his whole fee-ſimple, becauſe to many purpoſes he had the whole fee-ſimple in him, and the confirmation ſhall be taken moſt ſtrong againſt him that made it.

Tenant in taile diſcontinueth in Fee and dieth, the Diſcontinuee maketh a leaſe for life, & granteth the Reverſion to the Iſſue, he ſhall not have a Formedon againſt Tenant for life, For by his Formedon he

tout mon droit al Tenant a terme de vie, ceo urera a celuy en le remainder, ou en l'reverſion, pur ceo que tout mon droit eſt ale per tiel releas. Mes en ceſt cas, ſi le Diſſeiſée confirme l'eſtate & le title celuy en le remainder ſans aſcun confirmation fait a tenant a terme de vie, le diſſeiſée ne poit entre ſur le Tenant a term de vie, pur ceo que l' remainder eſt dependant ſur l'eſtate le tenant a terme de vie; & ſi ſon eſtate ſerroit defeate, le remainder ſerroit defeate, per lentrie le diſſeiſee, & ceo ne ſerra reaſon que il per ſon entre defeateroit le remainder encounter ſon Confirmation, &c.

ceaſe I may enter. But when I releaſe all my right to the tenant for life, this ſhall enure to him in the remainder or in the reverſion, becauſe all my right is gone by ſuch releaſe. But in this caſe if the Diſſeiſee confirm the eſtate & title of him in the remainder without any confirmation made to Tenant for life, the Diſſeiſee cannot enter upon the Tenant for term of life, for that the remainder is depending upon the ſtate for life; & if his eſtate ſhould be defeated the remainder ſhould be defeated by the entry of the Diſſeiſee, & it is no reaſon that he by his entry ſhould defeat the remainder againſt his Confirmation, &c.

must recover the eſtate of Inheritance, and the Leſſee for life hath not the Inheritance, but the iſſue in taile himſelf hath it.

If feoffee upon condition make a leaſe for life, or a gift in taile, and the feoffor releaſe the Condition to the feoffee, he ſhall not enter upon the Leſſee or Donee, becauſe he cannot regain his antient eſtate.

If the Feoffee upon condition make a leaſe for life, the remainder in fee, if the Feoffor releaſe the condition to the Leſſee for life, it ſhall enure to him in the remainder, as well as in the caſe of the Right, or of a Rent, &c.

If a Feme Diſſeiſoreſſe make a feoffment in fee to the uſe of A. for life, and after to the uſe of her ſelf in taile, and the remainder to the uſe of B. in fee, and then taketh husband the Diſſeiſee, and he releaſeth to A. all his right, this ſhall enure to B. and to his own wife alſo, for by the rule of Littleton it muſt enure to all in the remainder.

But if A. letteth to B. for life, and B. maketh a leaſe to C. for his life. the remainder to A. in fee, A. releaſeth to C. all his right, this is good to perfect the eſtate of C. for his life. But when C. dieth, A. ſhall be in of his old eſtate, for his releaſe could not inure to himſelf to perfect his defeaſible remainder, but his antient right remaineth. And note, that in theſe two caſes the fee is diveſted, and veſted all at one inſtant, in the ſame manner, as if the tenant in taile make leaſe for life, at the ſame inſtant the eſtate taile is deveſted out of the Donee, and the reverſion in fee out of the Donor, & a new fee veſted in tenant in taile. And ſo if the husband make a leaſe for life of his wives Land, he deveſteth his own eſtate that he hath in her right, and the inheritance of his wife, and at the ſame inſtant veſteth a new reverſion in fee in himſelf.

Vid. 21. Aſſ. 17 & 18 H. 8. Recov. en value Br. 30. 13. E. 3. Entre cong. Br. 127.

¶ *Mes en ceſte caſe ſi le diſſeiſee confirme leſtate & title celuy en le remainder.* Here is the third caſe wherein the Releaſe and Confirmation do agree, for

for the Confirmation made to him in the remainder ſhall avail the tenant for life, as much as the Releaſe ſhall. Pl.Com Delamers caſe Vid.Sect.374.

¶ *Pur ceo que le remainder eſt dependant, &c.* By this ſome have gathered, that if a Diſſeiſor make a leaſe for life, reſerving the reverſion to himſelf, and the Diſſeiſee confirmeth the eſtate of the Diſſeiſor, that he may enter upon the Leſſee, becauſe the eſtate of him in the Reverſion dependeth not upon the eſtate for life as the Remainder: but all is one, for by the Confirmation made to him in the reverſion, all the right of him that confirmeth is gone, as well as when he maketh it to him in remainder, and he cannot by his entry avoid the eſtate of the Leſſee for life, but he muſt avoid the eſtate of the Leſſor, which againſt his own Confirmation he cannot do; and it hath been adjudged, that if a Diſſeiſor make a leaſe for life, and after levie a Fine of the Reverſion with Proclamations, and the five years paſs, ſo as the Diſſeiſee is for the Reverſion barred, he ſhall not enter upon the leſſee for life. Reported by Sir John Popham Chief Juſtice.

¶ *Le remainder ſerra defeat.* It is regularly true, that when the particular eſtate is defeated, that the remainder thereby ſhall be alſo defeated; but it faileth in divers caſes.

For where the particular eſtate and the remainder depend upon one title, there the defeating of the particular eſtate is a defeating of the remainder. But where the particular eſtate is defeaſible, & the remainder by good title, there though the particular eſtate be defeated, the remainder is good. As if the Leſſor diſſeiſe A. Leſſee for life, and make a leaſe to B. for the life of A. the remainder to C. in fee, albeit A. re-enter, and defeat the eſtate for life; yet the remainder to C. being once veſted by good title ſhall not be avoided; for it were againſt reaſon, that the Leſſor ſhould have the remainder again againſt his own livery, and this is well warranted by the reaſon of Littleton in this caſe. So it is, if a leaſe be made to an infant for life, the remainder in fee, the Infant at his full age diſagree to the eſtate for life, yet the remainder is good, for that it was once veſted by good title; for in both theſe caſes there was a particular eſtate at the time of the remainder created. Vid. Pl. Com. Colthirſt's caſe.

If a leaſe be made to A. for the life of B. the remainder to C. in fee, A. dieth before an occupant entreth, here is a remainder without a particular eſtate, and yet the remainder continueth good. 17 E.3.48.

If Rent is granted to the tenant of the land for life, the remainder in fee, this is a good remainder, albeit the particular eſtate continued not, for Eo inſtante that he took the particular eſtate, Eo inſtante the remainder veſted; and the ſuſpenſion in Judgment of law grew after the taking of the particular eſtate. 3 E.3.Abb Aſſ.

If a man grant a Rent to B. for the life of Alice, the remainder to the heirs of the body of Alice, this is a good remainder, and yet it muſt veſt upon an inſtant. 7 H.4.6.

Sect.522.

¶ ITem, ſi ſont deux diſſeiſors, & le diſſeiſée releſſa a un de eux, il tiendra ſon compagnion hors de la terre. Mes ſi le diſſeiſée confirma l'eſtate de lun, ſans pluis dire en le fait, aſcuns diont que il ne tiendra ſon compagnion dehors, Mes tiendra joyntment ove luy pur ceo que riens fuit confirme forſque

ALſo, if there be two diſſeiſors, and the diſſeiſee releaſeth to one of them, he ſhall hold his companion out of the land; but if the diſſeiſee confirm the eſtate of the one without more ſaying in the Deed, ſome ſay that he ſhall not hold his companion out, but ſhall hold joyntly with him, for that nothing was con-

¶ This is the fourth caſe wherein the Releaſe and the Confirmation ſeem to differ, being made unto one of the Diſſeiſors.

¶ *Confirme forſque ſon eſtate, &c.* Hereby it appeareth, that if the Diſſeiſee confirm the eſtate of the one Diſſeiſor in the Lands, To have and to hold the Lands or Tenements, or the right of the Diſſeiſee, to him and his heirs, he ſhall hold out the other Diſſeiſor; and that appeareth by Littleton, firſt upon theſe words (Confirm the eſtate of one) without more ſaying in the Deed

Deed, viz. To have and to hold the lands, &c. Secondly, the reason of Littleton in express words is, for that nothing was confirmed but his estate which was joynt. Thirdly, the next two Sections make it plain where the Habendum is added.

son estate que fuit joynt, &c.

firmed but his estate which was joynt, &c.

Hereby also it appeareth that a Release is more forcible in law than a Confirmation. If the Disseisée and a stranger disseise the heir of the Disseisor, and the Disseisée confirm the estate of his companion, this shall not extinguish his right that was suspended: so as if the heir of the Disseisor re-enter, the right of the Disseisee is revived. And so it is, if the Grantée of a Rent-charge and an estranger Disseise the tenant of the land, and the Grantee confirm the estate of his companion, the tenant of the land re-enter, the rent is revived; for the Confirmation extended not to the Rent suspended, otherwise it is of a Release in both cases.

Sect. 523.

¶ Et pur ceo aſcuns ont dit, que ſi deux Joyntenants ſont, & lun confirme leſtate lauter que il nad forſque joynt eſtat, ſicome il avoit avevant. Mes ſil ad tiels parols en le fait de confirmation, a aver & tener a luy & a ſes heires touts les Tenements dont mention eſt fait en le confirmation, donques il ad eſtate ſole en les tenements, &c. Et pur ceo il eſt bon & ſure choſe en cheſcun Confirmation daver ceux parolx; A aver & tener les tenements, &c. en fee, ou en fee taile, ou per terme de vie, ou pur terme dans, ſolonque ceo que le cas eſt, ou le matter giſt.

AND for this ſome have ſaid, that if two Joyntenants be, and the one confirm the eſtate of the other, that he hath but a joynt eſtate as he had before; but if he hath ſuch words in the Deed of Confirmation, to have and to hold to him and to his heirs all the tenements whereof mention is made in the Confirmation, then he hath a ſole eſtate in the tenements, &c. And therefore it is a good and ſure thing in every Confirmation to have theſe words; To have and to hold the tenements, &c. in fee, or in Fee tail, or for term of life, or for term of years, according as the caſe is, or the matter lyeth.

¶ AND this Confirmation leaveth the ſtate as it was, and doth not amount to any ſeverance of the Joynture as ſome have ſaid.

34 E.3, tit. Confirm. Pl. 15.

¶ *Mes ſil ad tiels parols en le fait, &c.* This is plain and evident enough.

¶ *Et pur ceo il eſt bone & ſure choſe, &c.* This is good counſel and worthy to be followed.

Sect. 524.

¶ HEre the diverſity is apparent between a Confirmation of the eſtate for life in the land, to have and to hold the ſaid ſtate in the land to him and his heirs, this cannot en-

¶ CAr al entent daſcuns, ſi hõe leſſa terre a un auter pur terme de vie, & puis confirma ſon e-

FOr to the intent of ſome, if a man letteth land to another for life, and after confirm his eſtate which

ſtate

ſtate que il ad en ſñ la terre a aver & tener ſon eſtate a luy & a ſes heires, ceſt confirmation quant a ſes heires eſt void, car ſes heires ne poient aver ſon eſtat que ne fuit forſque pur terme de ſon vie. Mes ſil confirma ſon eſtate p ceux parolx a aver meſme le terre a luy & a ſes heires, ceſt confirmation fait fee ſimple en ceſt caſe a luy en la terre, pur ceo que les parolx a aver & tener, &c. va a le terre & nemy al eſtate quel il ad, &c.

he hath in the ſame land, to have and to hold his eſtate to him and to his heirs, this confirmation as to his heirs is void, for his heirs cannot have his eſtate which was not but for term of his life. But if he confirm his Eſtate by theſe words, to have the ſame land to him and to his heirs, this Confirmation maketh a fee ſimple in this caſe to him in the land, for that the words to have and to hold, &c. goeth to the land and not to the Eſtate which he hath, &c.

large his eſtate, for his eſtate being but for life, that eſtate cannot be extended to his heirs. But in that caſe if he confirm the eſtate for life in the land in the premiſes of the Deed, and the Habendum is in this ſort, To have and to hold the land to him and his heirs, this ſhall enlarge his eſtate and create in him a fee ſimple. 18 E. 3. 401

Wherein is to be noted (e) that the Habendum and the premiſes doe in ſubſtance well agree together, and that the Habendum may enlarge the premiſes, but not abridge the ſame. (e) Vid. Pl. Com. in Throgmortons caſe. fol. Wrotesleys caſe, 197.

And ſeeing that in Conveyances, limitations of remainders are uſual and Common aſſurances, it is dangerous by concepts or nice diſtinctions to bring them in Queſtion, as hath in latter time been attempted.

¶ *Son Eſtate*, Vide Sect. 650.

Sect. 525.

¶ ITem, ſi jeo leſſa certaine terre a un feñ ſole pur terme d'ſa vie, la quel prent baron, & puis jeo confirma leſtate le baron & ſa feme, a aver & tener pur terme de lour deux vies, en ceſt caſe le baron ne tient joyntment ove ſa feñ, mes tient en droit de ſa feme pur terme de ſa vie. Mes ceſt Confirmation utera a le baron per voy de remainder p terme de ſa vie ſil ſurvelquiſt ſa feme.

ALſo, if I let certain land to a feme ſole for term of her life who taketh husband, & after I confirm the Eſtate of the husband & wife, to have and to hold for term of their two lives. In this caſe the husband doth not hold joyntly with his wife, but holdeth in right of his wife for term of her life. But this confirmation ſhall enure to the husband by way of remainder for term of his life if he ſurviveth his wife.

¶ HEre is the fourth caſe wherein the Releaſe and Confirmation do agree, and in this caſe it is to be obſerved, that the Baron hath ſuch an Eſtate in the Land in the right of his wife as he is capable of a Confirmation to enlarge his Eſtate; and therefore if the Confirmation had been made of his Eſtate to him alone, to have and to hold the Land to him and to his heirs, this had been good to have conveyed the Fee-ſimple to him after the deceaſe of his wife; for if in this caſe a releaſe be made to the Husband and his heirs, this is ſufficient to convey the Inheritance of the Land to the Husband. Vid. Sect. 573. 16 H. 6. tit. Releaſe 49. 22 E. 4. tit. Releaſe. Statham.

¶ *Ne tient joyntment ove ſa feme.* For two cauſes, Firſt, becauſe the

the wife hath the whole for her life. Secondly, Joyntenants muſt (as hath been before ſaid in the Chapter of Joyntenants) come in by one title. But in this caſe, if the Confirmation had been made to the Husband and Wife, To have and to hold the land to them two and to their heirs, they had been Joyntenants to the Fee ſimple, and the husband ſeiſed in the right of his wife for her life, for the husband and the wife cannot take by moieties during the Coverture.

18 Eſſ. 20.

If a man letteth land to the husband and wife, to have & to hold the one moiety to the husband for term of his life, and the other moiety to the wife for her life, and the Leſſor confirm the eſtate of them both in the land, To have and to hold to them and to their heirs, by this Confirmation, as to the moiety of the husband, it enureth only to the husband and his heirs, for the wife had nothing in that moiety; but as to the moiety of the wife, they are Joyntenants as hath been ſaid; for the husband hath ſuch an eſtate in his wives moiety, in her right, as is capable of Confirmation. But if ſuch a leaſe for life be made to two men by ſeveral moieties, and the Leſſor confirm their eſtates in the land, To have and to hold to them and to their heirs, they are tenants in common of the inheritance; for regularly the Confirmation ſhall enure according to the quality and nature of the Eſtate which it doth enlarge and increaſe.

18. Aſſ. p. 3. 18 E. 3. Confirm. 17. 17 E. 3. 58. 28 E. 3 94. 40. E. 3. 8. Aſſ. 20.

Caryes caſe, Lib. 5. fo 76. b.

If a leaſe for life be made to A. the remainder to B. for life, and the Leſſor confirm their Eſtates in the land, To have and to hold to them and their heirs, A. taketh one moiety to him and his heirs; and therefore of the one moiety he is ſeiſed for life, the remainder to B. for life, and then to him and his heirs: Of the other moiety A. is ſeiſed for life, the immediate inheritance to B. and his heirs, becauſe as to the moiety which B. takes, the ſame is executed; as if the Reverſion be granted to tenant for life, and to a ſtranger, it is executed for one moiety (as hath been ſaid before) and therefore in this caſe they are tenants in common.

39 H. 6. 9.

If lands be given to two men, and to the heirs of their two bodies begotten, and the Donor confirmeth their two eſtates in the land, To have and to hold the land to them two and to their heirs: In this caſe ſome are of opinion, That they ſhall be Joyntenants of the Fee ſimple, becauſe the Donees were Joyntenants for life; and (ſay they) the Confirmation muſt enure according to the eſtate which they have in poſſeſſion, and that was joynt. But others hold the contrary; for firſt they ſay, That the Donees have to ſome purpoſes ſeveral Inheritances executed, though between the Donees ſurvivor ſhall hold for their lives. Secondly they ſay, That when the whole eſtate which comprehendeth ſeveral Inheritances, is confirmed, the Confirmation muſt enure according to the ſeveral Inheritances, which is the greater and moſt perdurable eſtate; and therefore that the Donees ſhall be tenants in common of the Inheritance in this caſe.

¶ *Per voy de remainder, &c.* Here ſome Queſtion hath been made of this term Remainder, without any cauſe at all, becauſe in Law it is in nature of a Remainder. For in caſe of a fine, when a reverſion expectant upon an eſtate for life in A. is granted to B. Et quæ ad ipſum reverti debet poſt mortem, A. præfato B. & hæredibus ſuis remaneant, &c. and a more colourable exception might be taken againſt this word Remaneant there, than in the caſe of Littleton.

Vid. Sect. 573.

Pl. Com. Colthirſts caſe. Doct. & Stud ca. 21.

*16 H. 6. tit. Releaſe 47. (o) 9 E. 4. 18. (p) 6 E. 3. 9. (q) 17 E. 3. 68. b.

It is true, That in * 16 H. 6. it is called a reverſion: in (o) 9 E. 4. it is called a Remainder: in (p) 6 E. 3. it is ſaid, That by the Confirmation an eſtate accrued to the husband for term of his life. In (q) 17 E. 3. the husband, living the wife, ſhall have nothing but in abeyance after the death of his wife. But leſt there ſhould be pugna verborum, which learned and wiſe men ever avoid, all do reſolve, That the eſtate of the husband is good, and that it doth enure by way of increaſe and inlargement of his eſtate. And albeit in this caſe of Littleton, the husband by the Confirmation gaineth an eſtate for life in remainder (as Littleton termeth it) yet if the husband doth waſte, an action of waſte ſhall lie againſt him and his wife, notwithſtanding the mean remainder, becauſe the husband himſelf committeth the waſte, and doth the wrong; and therefore ſhall not excuſe himſelf for his committing of waſte, in reſpect he himſelf hath the remainder; no more, than if a man leaſeth to A. during the life of B. the remainder to him during the life of C. if he commit waſte, an action of waſte ſhall lie againſt him.

17 E. 3. 68. b. Vi. Sir Ed. Caries caſe, li. 5. f. 76. b.

Sect. 526.

¶ THis is the fifth Caſe wherein the Releaſe and confirmation do agree: and it is to be obſerved, That Chattels reals, as Leaſes for years, ward-

5 E. 3. 17. b. Pl. Com. 4. 8. b. 38 H. 6. 23. 14. H. 4. 12. 38. E. 3 53 Pl. Com. Dame Hales caſe, 50. Aſſ. p. 15. 4 H. 6. 5, 7 H. 6. 1. 9 H. 5. 2. 37. Li. Aſſ. 21 H. 7. 29. 21 E. 4. 30. 26 H. 8. 7.

¶ Mes ſi jeo leſſa al Feme ſole terre pur terme dans, le quel prent

But if I let land to a Feme ſole for term of years, who taketh husband, and af-

baron

baron, & puis jeo confirma l'eſtate le baron & ſa feme, a aver & tener la terre pur terme d'iour deux vies: en ceſt caſe ils ont joynt eſtate en le Franketenement de la terre, pur ceo que la feſm̃ navoit Franktenement adevãt, &c.

ter I confirm the eſtate of the husband and his wife, to have and to hold the land for term of their two lives: In this caſe they have a joynt Eſtate in the Freehold of the Land, for that the wife had no Freehold before, &c.

ſhips, and the like, are not given to the Husband abſolutely, (as all Chattels perſonals are) by the intermarriage, but conditionally if the Husband happen to ſurvive her, and he hath power to alien them at his pleaſure; but in the mean time the husband is poſſeſſed of the chattels real in her right.

Secondly, that the Husband hath ſuch a poſſeſſion in her right of the Chattel, as is capable of a Confirmation, or of a Releaſe.

Thirdly, that the Confirmation in this caſe to the Husband and wife for their lives maketh them Joyntenants for life, becauſe a chattel of a Feme covert may be drowned: and ſo note a diverſity betwen a leaſe for life, and a leaſe for years made to a Feme covert; for her eſtate of Freehold cannot be altered by the Confirmation made to her Husband and her, as the term for years may whereof her Husband may make diſpoſition at his pleaſure.

Sect. 527.

¶ ITem, ſi mon diſſeiſor granta a un rent charge hors de la terre dont il moy diſſeiſiſt & jeo reherſant le dit grant confirma meſme le grant, & tout ceo que eſt compriſe deins meſme le graunt, & puis jeo enter ſur le Diſſeiſor, Quære, en ceſt caſe, ſi le Terre ſoit diſcharge de le Rent ou nemy.

ALſo, if my Diſſeiſor granteth to one a Rent-charge out of the land whereof he diſſeiſed me, and I rehearſing the ſaid Grant, confirm the ſame Grant, and all that which is compriſed within the ſame Grant, and after I enter upon the Diſſeiſor, *Quære* in this caſe, if the land be diſcharged of the Rent or no.

¶ This is the fifth caſe, wherein the Releaſe and Confirmation do differ; for a Releaſe to the Grantee in this caſe (a) were void. It is holden by ſome Authority ſince Littleton wrote. That the Diſſeiſee after his re-entry ſhall not avoid the Rent charge againſt his own Confirmation: and there a general rule is taken, that ſuch a thing as I may defeat by my entry, I may make good by my Confirmation.

(a) 11 H. 7. 28. Lib. 1. fol. 147. Anne Mayows caſe, 3 H. 4. 10.

If the Feoffee upon condition grant a Rent-charge in Fee, and the Feoffor confirmeth it, and after the condition is broken, and the Feoffor enter, he ſhall not avoid the Rent-charge. And ſo it is if the heir of the Diſſeiſor grant a rent-charge, and the Diſſeiſee confirmeth it, and after recover the Land, he ſhall not avoid the Rent: and yet in neither of theſe caſes his entry was congeable at the time of Confirmation.

Lib. 1. fol. 147, 148. Anne Mayowes caſe.

Sect. 528.

¶ ITem, ſi un parſon dun Eſgliſe charge le glebe de ſon Eſgliſe per ſon fait, & puis l'Patron & Ordinarie

ALſo, if a Parſon of a Church charge the Glebe land of his Church by his deed, and after the Patron and ordinary con-

¶ *Parſon.* Perſona in the Legal ſignification, it is taken for the Rector of a Church Parochial, and is called Perſona Eccleſiæ, becauſe he aſſumeth and taketh upon him the Perſon of the Church, and is ſaid

Glanv. l. 13. c. 2, 3, 24, 25. Bract. li. 4. c. 28 5. &c. Brit. fo. 234. b. &c. Flet. li. 5. c. 19, 10. & lib. 6. c. 1. 8. Reg. F. N. B. 48. 49.

ſaid to be ſeiſed in jure Eccleſiæ, and the Law had an excellent end herein, viz. That in his perſon the Church might ſue for and defend her right, and alſo be ſued by any that had an elder and better right, and when the Church is full, it is ſaid to be plena & conſulta of ſuch a one Parſon thereof, that is, full and provided of a Parſon, that may vicem ſeu perſonam ejus gerere.

confirmont meſme le grant, & tout ceo que ē compriſe deins m̄ le grant, donques le grant eſtoyera en ſa force, ſolonq̄ l' purport de meſme le graunt. Mes en tiel caſe covient que le Patron eit Fee ſimple en la vowſon, car ſi nad eſtate en la vowſon forſque pur terme de vie, ou en le taile, donque l' grant ne eſtoyera forſque durant ſa vie, & la vie l' Parſon q̄ grantaſt, &c.

firme the ſame Grant, and all that is compriſed in the ſame Grant, then the Grant ſhall ſtand in his force, according to the purport of the ſame Grant. But in this caſe it behoveth, that the Patron hath a Fee ſimple in the Advowſon, for if he hath but an eſtate for life or in tail in the advowſon, then the Grant ſhall not ſtand, but during his life, and the life of the Parſon which granted, &c.

Brit. ubi ſupra.

Perſona Impерſonata. Parſon Imperſonee is the Rector that is in poſſeſſion of the Church Parochial, be it preſentative, or impropriate, and of whom the Church is full.

3 E.3.26.43. 38 E.3.4. 3 Mar. Dier.123.

Here are divers things to be noted: Firſt, That the Confirmation is of the grant which in Deed is but a mere aſſent by Deed to the Grant. And therefore it is holden, That if there be Parſon, Patron, and Ordinary, and the Patron and Ordinary give license by Deed to the Parſon to grant a Rent charge out of the glebe, and the Parſon granteth the Rent charge accordingly, this is good, and ſhall bind the Succeſſor; and yet here is no Confirmation ſubſequent, but a License precedent.

7 H.4.15.

(b) 19 El. Dy. 356, 357. 11 H.6.9.33 H.8. tit. Charge Br. 58.

Secondly, the Ordinary alone, without the Dean and Chapter, may agree thereunto, either by license precedent, or Confirmation ſubſequent, for that the Dean and Chapter hath nothing to do with that which the Biſhop doth as Ordinary, in the life time of the Biſhop.

Thirdly, (b) but if the Biſhop be Patron, there the Biſhop cannot confirm alone, but the Dean and Chapter muſt confirm alſo, for the advowſon or Patronage is parcel of the poſſeſſion of the Biſhoprick; and therefore the Biſhop without the Dean and Chapter, cannot make the grant good, but only during his own life, after the deceaſe of the Incumbent, either by license precedent, or Confirmation ſubſequent.

See more of theſe kinds of Confirmations in my Reports. Lib 2. 39. & li.1.153. Lib 4. 13, 24. lib.5. fol.31.81. li.10.6. lib.11. 19. Lib.6. 34.

A. Parſon of D. is Patron of the Church of S. as belonging to his Church, and preſents B. who by conſent of A. and of the Ordinary grants a Rent-charge out of the Glebe; this is not good to make the Rent-Charge perpetual, without the aſſent of the Patron of A. no more then the aſſent of the Biſhop who is Patron, without the Dean and Chapter, or no more then the aſſent of the Patron, being tenant in tail or for life, as Littleton ſaith. And Littleton here ſaith, that the Patron that confirms muſt have a Fee-ſimple, meaning to make the charge perpetual. And Littleton after ſaith, that in the caſe of the Parſon the fee is in abeyance, and ſeeing the conſent of the Patron is in reſpect of his intereſt as heir it appeareth by Littleton he may conſent upon condition; otherwiſe it is of an Attornment, becauſe that is a bare aſſent. Alſo if the eſtate of the Patron be conditional, and he confirmeth, and after the Condition is broken, the Confirmation is void.

31 E.3. Grant. 61.26. Aſſ 38.8 El. D.252. Vid lib. fol. Le caſe, de Dean & Chapter de Norwich.

Fourthly, he that is Patron muſt be Patron in Fee ſimple; for if he be Tenant in tail, or tenant for life, his Confirmation or agreement is not good to bind any Succeſſor, but ſuch as come into the Church during his life. But if the Patron be Tenant in tail, and diſcontinue the eſtate in Tail, the Leaſe ſhall ſtand good during the diſcontinuance; or if the eſtate tail be barred it ſhall ſtand good for ever.

12 H.4.11.19 E.3.7. 7 El. Dyer. 248. 11 H.6.9.10 El. Dy. 6 E.3.10.2 E.3.29. 9 E.4.6.2 H.4.11. 38 E.3.19.2; E.3.54.

But here is to obſerved a diverſity between a ſole Corporation, as Parſon, Prebend, Vicar, and the like, that have not the abſolute Fee in them, for to their Grants the Patron muſt give his conſent. But if there be a Corporation aggregate of many, as Dean and Chapter, Maſter, Fellows, and Scholars of a Colledge, Abbot or Prior, and covent, and the like, or any ſole Corporation that hath the abſolute Fee, as a Biſhop with conſent of the Dean and Chapter, they may by the Common Law make any grant of or out of their poſſeſſions, without their Founder or Patron, albeit the Abbot or Prior, &c. were preſentable: and ſo it is of a Biſhop, becauſe the whole eſtate and right of the Land was in them, and they may reſpectively maintain a writ of Right.

If

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If a Biſhop hath two Chapters, and he maketh a grant, both Chapters muſt confirm it, or elſe the Succeſſor ſhall avoid it. But if one of the Chapters be diſſolved, then the confirmation of the other ſufficeth, but it needeth not the confirmation of the King who is founder and Patron of all Biſhopricks. Temps R. 2. tit. grant. 104. 10 E. 3 tit. Aſſiſe Statham 11 Eliz. Dyer 282.

And note a diverſity between a confirmation of an Eſtate, and a Confirmation of a Deed, for if the Diſſeiſor make a Charter of feoffment to A. with a Letter of Attorney, and before livery the Diſſeiſee confirm the eſtate of A. or the Deed made to A. this is clearly void, though livery be made after. But if a Biſhop had made a Charter of feoffment with a letter of Attorny, and the Dean and Chapter before livery confirm the Deed, this is a good confirmation, and livery made afterwards is good. And ſo it hath been adjudged.

The like law is of a confirmation of a Deed of grant of a Reverſion before Attornment.

In the ſame manner it is, if a Biſhop at the common law had granted lands to the King in fee by Deed, and the Dean and Chapter by their Deed confirm the deed of the Biſhop, and after the deed of the Biſhop is inrolled, this is good, albeit the confirmation of the Dean and Chapter be not inrolled, for the aſſent upon the matter is made to the Biſhop.

But this confirmation that Littleton here ſpeaketh of muſt be made in the life, and during the incumbency of the perſon; and ſo in the life of the Biſhop, or of any other ſole corporation. But it is to be known, that Grants made by parſons, prebends, Vicars, Biſhops, Maſter and Fellows of any Colledge, Dean and Chapter, Maſter or Gardeine of any Hoſpital, or any having any Spiritual or Eccleſiaſtical living are reſtrained by (c) divers Acts of Parliament, ſo as they cannot grant any rent charge, or to make any alienation, or to make any leaſes other than ſuch as are mentioned in thoſe acts, which you may read at large, and the expoſitions upon the ſame in my * Commentaries. 33 E. 3. Confirm. 22. 31 E. 3. Abb. 10. 21 H. 7. 1 Vide Sect. 393. & 643. c) 13 Eliz. cap. 10. 1 Eliz. cap. 18. Eli. c. 11. 1 Jac. cap. . Vid ſect. 593 & 648. * Lib 2 fol. 46 fol. 4, 76. & 120 li 5. 9. 6 14. lib. 6. 37. lib 7. 8. lib. 11. 67.

Sect. 529.

¶ Item ſi home leſſa terre pur terme de vie, le quel tenant a term̃ de vie charge la terre ove un rent en fee, et celuy en le reverſion confirma meſme le grant, le charge eſt aſſets bone & effectual.

Alſo if a man letteth land for term of life, the which Tenant for life charge the land with a rent in fee, and he in the reverſion confirm the ſame grant, the charge is good enough and effectual.

¶ Here is a diverſity to be obſerved where the determination of the rent is expreſſed in the Deed, and when it is implied in Law. For when Tenant for life granteth a rent in fee, this by law is determined by his death, and yet a confirmation of the grant by him in the reverſion makes that grant good for ever without words of inlargement, or clauſe of diſtreſs, which would amount to a new grant. And yet if the Tenant for life had granted a Rent to another and his heirs by expreſs words during the life of the Grantor, and the Leſſor had confirmed that grant, that grant ſhould determine by the death of tenant for life. 26. Aſſ. Pl. 18. 45. Aſſ. Pl 13. Lib. 1. fol. 147. Anne Matowes caſe. 14. Aſſ. Pl. 14.

Tenant for life upon a condition grants a Rent in fee, the leſſor confirms the grant, and after the condition is broken, the Leſſor re-enters, he ſhall not avoid the grant.

Sect. 530.

¶ Item ſi ſoit un perpetual chanterie, dont lordinarie nad rien a medler ne a faire, Quære ſi le Patron del chaunte-

Alſo if there be a perpetual Chanterie wherewith the ordinary hath nothing to doe or meddle, *Quære* if the Patron of

¶ This is meant of a Chauntery Donative wherewith the Ordinary hath not to deal; and by this grant, when Littleton wrote, the Chauntery ſhould have been charged for ever, becauſe no other had any intereſt in this Chantery ſave Vid. ſect. 448.

ſave onely the Patron and Chauntery Prieſt, and the grant is made Concurrentibus iis quæ in jure requiruntur. But ſince Littleton wrote, all & all manner of free Chappels and Chanteries perpetual, whereof Littleton here ſpeaks, are by (a) Acts of Parliament given to the Crown, and the bodies politick thereof be diſſolved. See hereafter Section 648. more at large of all this preſent Section.

ry, & le Chapleine de meſme le Chauntery poient charge le chantery ove un Rent charge en perpetuitie.

the Chantery, and the Chaplein of the ſame Chantery may charge the Chantery with a rent charge in perpetuity.

(a) 37 H.8. cap.4. 1 E.6. cap.14.

Sect. 531.

HEre Littleton proceedeth accordíng to the former diviſion, to ſhew words that in Law do amount to a Confirmation, And here is to be obſerved, that ſome words are large and have a general extent, and ſome have a proper and particular application. The former ſort may contain the latter, as Dedi, or Conceſſi may amount to a grant, a feoffement, a gift, a Leaſe, a Releaſe, a Confirmation, a ſurrender; &c. and it is in the election of the party to uſe to which of theſe purpoſes he will.

Bra. l.2. fo.59.b. 21 H.6. feoffments & faits 103. & 22 H.6.32. 14 H.4.36. 19 H 6.44. 7 H.7.16. 31 E.3. briefe 291. Brooke tit. confirm. 20. 14 H.7 2.37 H.6.17. Dyer 8 Eliz.4 H. 7.10. 21 E.4.36.40 E.3.41.

Eſt autem Confirmatio quaſi quædam ratihabitio, ſufficit tamen quandoque per ſe, ſi etiam in ſe contineat donationem, ut ſi dicat quis, dedi & confirmavi, licet juvari poſſit ex aliquo donatione præcedente.

Bract lib.3.fo.59.b.

But a Releaſe, confirmation, or Surrender, &c. cannot amount to a grant, &c. nor a Surrender to a confirmation, or to a releaſe, &c. becauſe theſe be proper and peculiar manner of conveyances, and are deſtined to a ſpecial end.

ITem en aſcun cas ceſt Verbe Dedi ou ceſt Verbe Conceſſi, ad meſme l'effect en ſubſtance, & urera a meſm lentẽt, come ceſt verbe Confirmavi. Sicome jeo ſue diſſeiſie dun carve de terre, & jeo face tiel fait; Sciant præſentes, &c. quod dedi a le diſſeiſor, &c. vel quod conceſſi a le dit diſſeiſor le dit carve, &c. & jeo deliver tantſolement le fait a luy ſauns aſcun livery de ſeiſin del terre, ceſt un bone Confirmation, & aury fort en ley, ſicome il avoit en le fait ceſt verbe confirmavi, &c.

ALſo in ſome caſe this Verb *Dedi*, or this Verb *Conceſſi* hath the ſame effect in ſubſtance, and ſhall enure to the ſame intent, as this Verb *Confirmavi*. As if I be diſſeiſed of a Carve of Land, and I make ſuch a Deed, *Sciant præſentes*, &c. *quod dedi* to the Diſſeiſor, *&c.* or *quod conceſſi* to the ſaid Diſſeiſor, the ſaid Carve, *&c.* and I deliver only the Deed to him without any livery of ſeiſin of the land, this is a good confirmation, and as ſtrong in law, as if there had been in the Deed this Verb *Confirmavi*, &c.

(c) 32 E.3. briefe 291. Brooke tit. Confirm. 20. Vid Teſtat. de Gloc, c.4. (i) 7 E.3.9.

Bracton.

14 H.4.6. Lib.5 fo.15. in Newcomens caſe,

& *Dedi & Conceſſi*, &c. Here is implied that there be more words than Dedi and Conceſſi, that will amount to a confirmation, as dimiſi. (c) In ancient Statutes and in original writs, as in the writ of Entry in caſu proviſo, in conſimili caſu ad Communem legem, and many others, this word dimiſi is not applied only to a Leaſe for life, but to a gift in taile, and to a State in fee, (f) Alſo if a man make a leaſe to A. for years, and after by his Deed the leſſor, Voluit quod haberet & teneret terram pro termino vitæ ſuæ. This is adjudged by this Verb (Volo) to be a good confirmation for term of his life, Benignæ enim faciendæ ſunt interpretationes cartarum propter ſimplicitatem laicorum, ut res magis valeat quam pereat.

And he to whom ſuch a Deed comprehending Dedi, &c. is made, may plead it as a Grant, as a releaſe, or as a confirmation, at his election.

If a Parſon and Ordinary make a Leaſe for years of the Glebe, to the Patron, and the Pa-

Patron by his Deed granteth it over, or if the Diſſeiſor granteth a Rent to the Diſſeiſee, and he by his deed granteth it over, and after re-enter, in both theſe caſes one and the ſame words do amount both to a grant and to a confirmation, in judgment of Law, of one and the ſame thing, ne res pereat. And ſo it is if a Diſſeiſor make a Leaſe for life, or a gift in tail, the remainder to the Diſſeiſee in fee, the Diſſeiſee by his Deed granteth over the remainder, the particular Tenant attorneth, the Diſſeiſee ſhall not enter upon the tenant for life, or in tail, for then he ſhould avoid his own grant, which amounteth to a grant of the eſtate, and a Confirmation.

Sect. 532.

¶ ITem ſi jeo leſſa terre un home pur terme dans, per force de quel il eſt en poſſeſſion, &c. Et puis jeo face un fait a luy, &c. Quod dedi & conceſſi, &c. le dit terre a aver pur terme de ſa vie, & deliver a luy le fait, &c. donq; maintenant il ad eſtate en le terre pur terme de ſa vie.

ALſo if I let land to a man for a term of years, by force whereof he is in poſſeſſion, *&c.* and after I make a Deed to him, *&c. Quod dedi & conceſſi, &c.* the ſaid land to have for term of his life, and I deliver to him the Deed, *&c.* then preſently he hath an eſtate in the Land for term of his life.

HEre is the the ſixth Caſe wherein the Confirmation and the releaſe do agree; And is evident and needeth no explication.

Sect. 533.

¶ ET ſi jeo die en le fait, a aver & tener a luy & a ſes heires de ſon corps engendres, il ad eſtate en fee tail, & ſi jeo die en le fait, a aver & tener a luy & a ſes heires, il ad eſtate en fee ſimple, car ceo urera a luy per force de confirmation denlarger ſon eſtate.

ANd if I ſay in the Deed, to have and to hold to him and to his heirs of his body ingendred, he hath an eſtate in fee tail. And if I ſay in the deed, to have and to hold to him and to his heirs, he hath an eſtate in fee ſimple: For this ſhall enure to him by force of the confirmation to enlarge his eſtate.

¶ THis alſo is evident and needeth no explication, ſaving that whenſoever a Confirmation doth enlarge and give an eſtate of inheritance, there ought to be apt words (as Littleton here expreſſeth them) uſed for the ſame.

Sect. 534.

¶ ITem ſi hom̃ ſoit diſſeiſie, & le diſſeiſor devie ſeiſie, & ſon heire eſt eins per

ALſo if a man be diſſeiſed, and the diſſeiſor die ſeiſed, and his heir is in by deſcent,

¶ *Quant al heir del diſſeiſor, &c. tenements paſſont per voy de feoffment.* For the

the land shall ever passe from him that hath the estate of the land in him. As if Cestuy que use, and his feoffees after the Statutes of 1 R. 3. and before the Statute of 27 H. 8. cap. 10. had joyned in a feoffment, it shall be the feoffment of the Feoffees, because the state of the land was in him.

21 H. 7. 34 b. Pl. Com. 59. a. in Wimbishes case.

So it is, if the Tenant for life, and he in the remainder or reversion in Fee joyn in a feoffment by Deed; The Livery of the freehold shall move from the lesser, and the inheritance from him in the reversion or remainder, from each of them according to his estate. For it cannot be adjudged by Law, that the feoffment of Tenant for life doth draw the reversion or remainder out of the lessor or him in remainder, or doth work a wrong, because they joyned together.

Pl. Com. 59. 2. Pl. Com. 140. in Brownings case. 2 H. 5. 7. 33 H. 7. 14. 13 E. 4. 1. 2. 27 H. 8. 13. M. 16. & 17. Eliz. 339.

If there be Tenant for life, the remainder in tail, &c. and Tenant for life and he in the remainder in tail levie a Fine, this is no discontinuance or divesting of any estate in remainder, but each of them passe that which they have power and authority to passe.

Lib. 2. fo. 76. Bredons case.

A. Tenant for life, the remainder to B. for life, the remainder in tail, the remainder to the right heirs of B. A. and B. joyn in a Feoffement by Deed, albeit it may be said that this is the Feoffment of A. and the confirmation of B. and consequently he in the remainder in tail cannot enter for the forfeiture during the life of B. yet because B. joyned in the Feoffment which was tortious to him in the remainder in tail, and is Particeps criminis, therefore they forfeited both their estates, and he in the remainder in tail might enter for his forfeiture. But if he in the reversion in fee and tenant for life joyn in a Feoffment by parol, this shall be (as some hold) first a surrender of the estate of Tenant for life, and then the feoffment of him in the Reversion; for otherwise if the whole should passe from the lesse, then he in the reversion might enter for the forfeiture, and every mans act (Ut res magis valeat) shall be construed most strongly against himself.

17 Eliz. Dier. 339.

And it is to observed, that Littleton here putteth a descent, so as the entry of the Disseisee is not lawful; for if the disseisor and disseisee joyn in a Charter of feoffment, and enter into the land, and make livery, it shall be accounted the feoffment of the Disseisee, and the confirmation of the Disseisor.

Quere

21 H. 7. 34 b. Pl. Com. 59. a. in Wimbishes case.

Pl. Com. 59. 2. Pl. Com. 140. in Brownings case. 2 H. 5. 7. 33 H. 7. 14. 13 E. 4. 1. 2. 27 H. 8. 13. M. 16. & 17. Eliz. 339.

Lib. 2. fo. 76. Bredons case.

17 Eliz. Dier. 339.

discent, & puis le disseisee & l'heire le disseisor sont joyntment un fait a un auter en fee, & livery de seisin sur ceo est fait (quant al heire le disseisor, que ensealast le fait) les tenements passont & uront per mesme le fait p voy de feoffement, & quant al disseisee que ensealast mesme le fait, ceo ne urera si non p voy de confirmation. Mes si le disseisee en cest cas port briefe dentre en le Per & Cui envers alienee del heir le disseisor: Quære comẽt il pledra cel fait envers l'demandant per voy de confirmation, &c. Et saches, mon fits, que est un des pluis honorables, laudables, & profitables choses en nostre ley, de aver le science de bien pleder en actions reals & personals, & pur ceo jeo toy counsaile especialment de mitter ton courage & cure d ceo apprender.

and after the disseisee, and the heir of the disseisor make joyntly a Deed to another in fee, and livery of seisin is made upon this, (as to the heir of the Disseisor that sealed the deed) the tenements do pass and enure by the same deed by way of Feoffment; and as to the Disseisee who sealed the same Deed, this shall enure but by way of Confirmation. But if the Disseisee in this case brings a Writ of entry in the *Per* and *Cui* against the alienee of the heir of the Disseisor: *Quære* how he shall plead this Deed against the Demandant by way of confirmation, *&c.* And know, my son, that it is one of the most honorable, laudable, and profitable things in our Law, to have the science of well pleading in actions reals & personals; and therefore I counsel thee especially to imploy thy courage and care to learn this.

¶ *Quære coment il pledera ceſt fait*, &c. He may plead the frofſment of the heir of the Diſſeiſor, and the confirmation of the Diſſeiſee as it hath been pleaded, and allowed. Lib.1.fol.146,147. Mayowes caſe.

¶ *Et ſaches, mon fits, que eſt un de pluis honorable*, &c. Here is to obſerved the excellencie of good pleading, and Littletons grave advice, that the Student ſhould imploy his courage and care for the attaining thereof which he ſhall attain unto by three means: Firſt by reading, ſecondly by obſervation, and thirdly by uſe and exerciſe. For in antient time the Serjeants and Appzentices of Law did draw their own pleadings, which made them good pleaders. And in this ſenſe Placitum may be derived a Placendo, quia omnibus placet. See my preface to the 9th Book of my Reports.

Now ſeeing good pleading is ſo honourable and excellent, and that many a good cauſe is daily loſt for want of good and orderly pleading, it is neceſſary to ſet down ſome few rules (amongſt many) of the ſame, to facilitate this learning, that is ſo highly commended to the ſtudious Reader. For when I diligently conſider the courſe of our books of years & terms from the beginning of the reign of Edw.3. I obſerve, that more jangling and queſtions grow upon the manner of pleading, and exceptions to form, than upon the matter it ſelf, and infinite Cauſes loſt or delayed for want of good pleading. Therefore it is a neceſſary part of a good common Lawyer to be a good Prothonotary. And now we will perform our promiſe.

The order of good pleading is to be obſerved, which being inverted, great prejudice may grow to the party, tending to the ſubverſion of Law. Ordine placitandi ſervato, ſervatur & jus, &c.

Firſt in good order of pleading, a man muſt plead to the juriſdiction of the Court. Secondly to the perſon, and therein firſt to the perſon of the Plaintiff, and then to the perſon of the Defendant. Thirdly to the Count. Fourthly to the writ. Fifthly to the Action, &c. (a) which order and form of pleading you ſhall read in the Ancient Authors agreeable to the Law at this day; and if the Defendant miſorder any of theſe, he loſeth the benefit of the former.

The Count muſt be agreeable and conform to the writ, the bar to the Count, &c. and the judgments to the Count, for none of them muſt be narrower or broader than the other.

A Count or Declaration, which anciently and yet is called Narratio, ought to contain two things (b) viz. Certainty and verity, for that it is the foundation of the ſuite, whereunto the Adverſe party muſt anſwer, and whereupon the Court is to give its judgment: (c) Certa debet eſſe intentio & narratio, & certum fundamentum, & certa res quæ deducitur in judicium. But it muſt be underſtood, that there be three kind of certainties: Firſt to a common intent, and that is ſufficient in bar, which is to defend the party and to excuſe him. (d) Secondly a certain intent in general, as in Counts, Replications, and other pleadings of the Plaintiff, that is, to convince the Defendant, and ſo in Indictments, &c. Thirdly, a certain intent in every particular, as in Eſtoppels.

(e) He that pleadeth a plea in abatement of the writ (which of ancient times was, and yet is called Breve) or a plea after the latter continuance, ought to plead it certainly.

(f) The ancient forms of Counts are to be duly obſerved, as Cum demiſit, or Cum dedit, and not to ſay that he was ſeiſed and demiſed, &c. (And yet if he ſay ſo, it maketh not the count vicious) (g) but in a barr, replication, or other kind of pleading, the party muſt alledge a ſeiſin in the leſſor or Donor, and ancient forms of pleading are alſo to be obſerved.

(h) Counts, or ſuch as be in nature of counts, as an Avowry, wherein the Defendant is an actor) need not to be averred, but all the other pleas in the Affirmative ought to be averred. Et hoc paratus eſt verificare, &c. but pleas merely in the Negative ought not to be averred, becauſe a Negative cannot be proved.

(i) Where there is but one Tenant, or one defendant, he cannot have two ſuch pleas, as each of them do go to the whole; but where there are divers, each of them may plead ſeveral pleas, which extend to the whole.

(k) That which is alledged by way of conveyance or inducement to the ſubſtance of the matter need not to be ſo certainly alledged, as that which is the ſubſtance it ſelf.

(l) Every plea muſt be direct, and not by way of argument, or rehearſal.

(m) Where a matter of Record is the foundation or ground of the ſuit of the Plaintiff, or of the ſubſtance of the plea, there it ought to be certainly and truly alledged, otherwiſe it is where it is but conveyance. But the proceedings & ſentences in the Eccleſiaſtical courts may be alledged ſummarily, as that a Divorce was had between ſuch parties, for ſuch a cauſe, and before ſuch a Judg, and Concurrentibus hiis quæ in jure requiruntur, for the Judg muſt be alledged, to the intent the Court may write to him if it be denied.

Good matter muſt be pleaded in good form, in apt time, and in due order, or otherwiſe great advantages may be loſt.

(a) Bracton li.5.fo.400. Britton fo.41.a.& 122. Fleta l.6.ca.35,36,&c. 40 E.3.9.b.17 E.3.74. 8 E.3.5.& 9.35 H.6.13. (b) Pl.Com.ſo.122,123, 3 E.4.21. Vid.lib.5.fol.120, 121. (c) Bracton li 1.fo.140. (d) Lib.5.120,121 Bongs caſe Pl. Com.56. Wimbiſhes caſe. (e) 7 H.6.17. 32 H.6, 12. 15.P.Com.33.b. (f) 14 H.6.48.8 H.5. 4 b.21 E.4.32. 5 E.3. 15.39 H.6.3.10 H.6.2. 21 H.7.26. (g) 48 E.1.8.2 H 4.13. 6 H.4.2.b.10 E.4.2. F.N.B.156.c 11 E.3.Aide 2. 9 H 6. 19. 10 E.4.4. (h) Pl.Com. Brets caſe, 342.27 H.8.27. 2. H.6.9 H.7. (i) 40 E.3.31,32,33. 41 E.3 11,9 H 6,46. 27 E.3 81.44 E. 3.21. 45 E.3.Double Plea.39. 43 E.3 31.36 H.6.29. 37 H.6.13.33 H.6.51. 15 E.4 25.7 H.4.12. 41 E.1. Double plea 78. (k) Pl.Com.81.11 H.4. 89.34 H.6 48.19 R. 2. Action ſur le caſe 52. 22 E.3.19.10 E.3.9. (l) 5 H 7.8 6 E.4.2. 21 E 4.44. 27 H.8.4. 22 H.6.17 E.4.7. 22 E.4.8. (m) Pl. Com. 65.2.b.& 100.376.& 410. 22 H.6.38.19 H.6.49. 37 H.6.14.36 H.6.5. 21 E.2.54. 1 H. 6.15. 38 H.6.23.42 Aſſ.3. 48 E.3.11.3 E. 4.12. 9 E.3.46.21 E.4. 51. 35 H.6.55.10 H.7.9. 15.11 H.7.8. 22 E.3.2.34 H. 6.27. 12 H.8.1.6.7 E.4. 32. 9 E.4.24. 8 E.4.31. 8.Aſſ.29.5 E.4.70.3 E. 4.1.

(n) 15 H.6.35.21 E.4. 31.9 H.4.5.19 H.6.73. 5 E.4.12.10 E.4 18. 13 H.7.18.36 H.8. Pleading, Br.160.

(o) V.Sect.193.3 H. 6. 47.41 E 3.22.9. Aſſ.9. 22 Aſſ.45.2 E 3.42. 13 E.3.Anc.Demeſne 15.20 E.3.lib.45.7 H.7. 8.l.10.ſo 91.l.11.fo.10.

(p) 3 H.7.3.26 Aſſ. 10. 14 H.4.4.b.27 H.6.8.b. 21 H.6.Debt 43. 7 H.6. 24.31.35 H.6.48. 47 E.3.14.Pl.Com.46,2 Lib.3 f.58,59.Linc.Col. caſe.

(q) 21 E 4.40.2,3. 20 E.4.10.21 E.4. 36. 21 H.6.30.

(r) 40 E.3.40. 43.46. 41 E.3.18 E. 3. 16. 26 E.3.68.42 E.3.3. 10.46.6 E.3,37. 8 E.3.20,.0 E.3.60. 14 H.4.15. 12 E.4.1. 38 E.3.28. 7 H.7.3.

(ſ) 10 E 4.3.27 H.6. 8. H.7. 3.9 H.7.16. 37 H.6 1.27.H 8.13. 21 H.7.25,11 H.4.33. Pl.Com.79.16 E.4. 10. 1 H.7.33.20 H.7. 1. 6 E 4.4,5.21 E.4.34. 22 H.6.47.11 H.6.8. 25 E.3,30.b.23.Aſſ.7. 2 Eliz.Dyer 184.

(t) Pl.Com.149.b & 10 .a 37 H.6.38.

(u) 18 E.4. 6.b. 21 E.4.2.76.b H.7.13. 38 H.6.17,18,19. 18 E.3 34.Pl.Com. 229.b.Lib.8.133. Turners caſe.

(w) 5 H.7.34.5 E.3.26. 21 H. 6. 8.

(x) 19 H.6.30.32.Pl. Com.2 2.b.& fo.502. per Dyer & 503.

(y) 13 H.4. 17. 10 E.4. 18. 33 H.6.14. 35 H.6. 30.21 H.7.32.Bract. lib.3.fol.154.Pl.Com. 87.b.2. H.6. Gard.58.

(a) 2 H.7.1 .4 H.7. 12. 10 H.7.12.13 H.7.19. 36 H.5.b.

(b) Li.8.fo.133.Turners caſe, & fo.100.Benhams caſe, Lib.9.25.61.Li. 0 100.

(c) 12.H.8.6,7.2 R.3. 17.14 E.4.7. 9 E.4.19.

(d) 44 E.3.2.34 H.6.5. 10 H.6.6.& 17.12 E.4. 11.14. 14 H.8.24. 7 E.3.12.17 E.3.44.

(e) 18 H.6.33.12 H.6. 53.36 H.6.17.38 H.6. 18.25.5 E.3. 15,16. 22 Aſſ.33.2 El.Di.184.

(f) Pl.Com.14,15. 2 E. 4.18.39 E. 3.14.32.33. 8 E.3.17.Qu. Imp.25. 18 H.6.30.7 4.18.28. Aſſ.1 .24 E.3.48.22. E.3.13.38 H.6.2. 32. H.6.14.19 H.8.7.7 H. 8.12.b.

(n) General eſtates in Fee ſimple may be generally alledged, but the commencement of Eſtates tail, and other particular eſtates, regularly muſt be ſhewed, unleſs in ſome caſes where they are alledged by way of inducement; and the life of tenant in tail, or for life, ought to be averred.

(o) When any ſpecial and ſubſtantial matter is alledged by either party, That ought to be eſpecially anſwered, and not to be paſſed over by a general pleading.

(p) The Plea of every man ſhall be conſtrued ſtrongly againſt him that pleadeth it, for every man is preſumed to make the beſt of his own caſe: Ambiguum placitum interpretari debet contra proferentem.

(q) Every plea that a man pleadeth ought to be triable; for without trial the cauſe can receive no end: Et expedit reipublicæ ut ſit finis litium.

(r) The tenant before his default ſaved, may plead all Pleas, which prove the writ abated, as death, &c. or matters apparent in the writ; but no Plea, which proves it abateable, as taking of husband, &c.

(ſ) When a man is authoriſed to do any thing by the Common law, by Grant, Commiſſion, Act of Parliament, or by cuſtome, he ought to purſue the ſubſtance and effect of the ſame accordingly.

(t) All neceſſary circumſtances implied by Law in the Plea need not to be expreſſed; as in the Plea of a feoffment of a Manor, Livery and Attornment are implied.

(u) When a Count, Barr, Replication, &c. is defective in reſpect of omiſſion of ſome circumſtance, as time, place, &c. there it may be made good by the Plea of the adverſe party; but if it be inſufficient in matter, it cannot be ſalved.

(w) Every man ſhall plead ſuch pleas as are pertinent for him, according to the quality of his caſe, eſtate, or intereſt, as Diſſeiſors, Tenant, Incumbents, Ordinaries, and the like.

(x) Surpluſage ſhall never make the Plea vicious, but where it is contrariant to the matter before.

(y) That which is apparent to the Court by neceſſary collection out of the Record need not to be averred.

(a) A man is bound to perform all the covenants in an Indenture: if all the covenants be in the affirmative, he may generally plead performance of all; but if any be in the negative, to ſo many he muſt plead ſpecially (for a negative cannot be performed) & to the reſt generally.

(b) So if any be in the disjunctive, he muſt ſhew which of them he hath performed. So if any are to be done of record, he muſt ſhew that ſpecially, and cannot involve that in general pleading.

(c) In many caſes the Law doth allow general pleading, for avoiding of prolixity and tediouſneſs, and that the particular ſhall come on the other ſide.

(d) Pleadings which amount to the general iſſue are not to be allowed, but the general iſſue is to be entered. Vid.Sect.10.485.489.

(e) Every plea ought to have his proper Concluſion; as a plea to the writ to conclude to the writ; a plea in Barr to conclude to the action; an Eſtoppel to relie upon the Eſtoppels, Et ſic de ſimilibus.

(f) When the Concluſion of a plea, Et iſſint, Et ſic, is in the affirmative, it ſhall not wave the ſpecial matter, for there the ſpecial matter is the ſubſtance and foundation of the Concluſion, and affirmed by the ſame. But where the concluſion is in the negative, there the ſpecial matter regularly is waved.

(g) Whenſoever ſpecial matter is pleaded, and the concluſion (Et ſic) is to the point of the writ or Action, the ſpecial matter is waved.

The names of legal Records are, a writ, a Barr, a Count, a Replication, a Rejoynder, a Rebutter, a Surrebutter, &c.

(h) New and ſubtil devices and inventions of pleading ought not to alter any principle of Law, whereof you have heard plentifully before.

The Count or Declaration is an expoſition of the writ, and addeth time, place, and other neceſſary circumſtances, that the ſame may be triable, and any imperfection in the Count doth abate the writ.

Pleadings are divided into Barrs, Replications, Rejoynders, Surrejoynders, Rebutters & Surrebutters, &c. They are words of Art, & are called Barrs, Barræ, ſo called becauſe it barreth the Plaintiff of his action, Replicationes, a Replicando; Rejunctiones, a Rejungendo; Rebutter, of the French word Rabouter, i. a Repellendo, To put back or avoid; and ſo of Surrebutter.

But each party muſt take heed of the ordering of the matter of his pleading, leſt his Replication depart from his Count, or his Rejoynder from his Barr; Et ſic de cæteris.

(i) In ancient writers a Barr is called Exceptio peremptoria, a Replication was then called Replicatio, as now it is: a Rejoynder, Triplicatio; a Surrejoynder, Quadruplicatio; & ſic ulterius in infinitum.

(g) 7 E.4.26.11.H.7.4. 12 H.7.6. 33 H.6.9. 7.43. (h) Vid.ſect.485.(i) Bract.li.5.fo.400.Flet.li.6.cap.17.

A departure in pleading is ſaid to be when the ſecond Plea containeth matter not purſuant to his former, and which fortifieth not the ſame, and thereupon it is called Deceſſus, becauſe he departeth from his former Plea; and therefore whenſoever the Rejoynder (taking one example for all) containeth matter ſubſequent to the matter of the bar, & not fortifying the ſame, this is regularly a departure, becauſe it leaveth the former, & goeth to another matter. As if in an aſſiſe the tenant plead a deſcent from his father, and giveth a colour, the Demandant intituleth himſelf by a Feoffment from the tenant himſelf, the plaintiff cannot ſay, That that Feoffment was upon Condition, and to ſhew the condition broken, for that ſhould be a clear departure from his Bar, becauſe it containeth matter ſubſequent. But in an Aſſiſe, if the tenant pleadeth in Bar, that I.S. was ſeiſed and infeoffed him, &c. and the Plaintiff ſheweth, That he himſelf was ſeiſed in Fee, until I. S. diſſeiſed, who infeoffed the tenant, and he re-entred, the Defendant may plead a releaſe of the Plaintiff to I.S. for this doth fortifie the Bar.

39 E.3.13.b.39 H.6.19. 6 H.7.8.21 H. .32. Pl. Com.105.1.Mar Dier 93.28 H.8.ib.31.

6 H.6.7,8.3 H.6. Departure 2.

If a man plead performance of covenants, and the plaintiff reply, That he did not ſuch an act according to the covenant, the defendant ſaith, That he offered to do it, and the Plaintiff refuſed it, this is a departure, becauſe the matter is purſuant: for it is one thing to do a thing, and another to offer to do it, and the other refuſed to do it; therefore that ſhould have been pleaded in the former plea. Vide & Cave in a Quare impedit, what Plea ſhall be ſafely pleaded in primo placito.

8 El.Dy.253,23 El.Dy. 271.6 E.3.3.40 E.3.31. 43 E.3.11.a E.4.4. 18 E.3,4.24,5 H.7.27.8 H.6.11.33 H.6.14.

When a man in his former Plea pleadeth an eſtate made by the Common law, in the ſecond plea regularly he ſhall not make it good by an Act of Parliament. So when in his former plea he intituleth himſelf generally by the common Law, in his ſecond plea, he ſhall not inable himſelf by a cuſtome, but ſhould have pleaded it firſt.

Pl.Com.105.b.Palmerſtones caſe, 21 H.7.25. 27 H.8.3.21 H.7.17. 37 H.6.5.38 H.6.25.

If a man plead an eſtate generally, as for example (a Feoffment in Fee) he in his ſecond plea ſhall not maintain it by other matter tant amount in law, as by a Deſſiſen and releaſe, or by a leaſe and releaſe, or a gift in tail in Bar, and in the ſecond plea a Recovery in value, for this is a departure: but he in that caſe ſhall count of a gift, and maintain it in his Replication by a Recovery in value, becauſe he could have no other count.

21 H.7.25.1 E.4.4.3 H. 7.5.7 H.7.2.

See more of this matter, where the plaintiff varying from time or place alledged in the count of Actions tranſitory, ſhall commit no departure.

Vide Sect.485.

The plea that contains duplicity or multiplicity of diſtinct matter to one & the ſame thing, whereunto ſeveral anſwers (admitting each of them to be good) are required, is not allowable in law. And this rule, you ſee, extendeth to pleas perpetual or peremptory, and not to Pleas dilatory: for in their time & place a man may uſe divers of them, and hereof ancient writers * ſpeak notably; Sicut Actor una actione debet experiri ſaltem illa durante, ſic oportet tenentem una exceptione, dum tamen peremptoria (quod de dilatoriis non eſt tenendum) quia ſi liceret pluribus uti exceptionibus peremptoriis ſimul & ſemel, ſicut fieri poterit in dilatoriis, ſic ſequeretur, quod ſi improbatione unius deficerit, ad aliam probandam poſſit habere recurſum, quod non eſt permiſſibile, non magis quam aliquem ſe defendere duobus baculis in duello, cum unus tantum ſufficiat.

Pl.Com.139.142.

* Fleta lib.6 cap 35. Bracton li.5.fo.400.

But where the tenant or defendant may plead a general Iſſue, there upon the general iſſue pleaded, he may give in evidence as many diſtinct matters, to bar the action of right of the Demandant or Plaintiff, as he can.

A ſpecial Verdict may contain double or treble matter, and therefore in thoſe caſes the tenant or defendant may either make choice of one matter, and to plead it to bar the Demandant or Plaintiff, or to plead the general iſſue, and to take advantage of all: or he may plead to part one of the Pleas in bar, and to another part another Plea: and his concluſion of his plea ſhall avoid doubleneſs, & hereby neither the Court nor the Jury is ſo much inveigled, as if one plea ſhould contain divers diſtinct matters. And if the Tenant make choice of one plea in Bar, & that be found againſt him, yet he may reſort to an action of an higher nature, and take advantage of any other matter. And the Law in this point is by them that underſtand not the reaſon thereof miſliked, ſaying, Nemo prohibetur pluribus defenſionibus uti.

17.E.3.73.

39 H.6.27.

And it is worthy of obſervation, That in the Reigns of Edward the ſecond, Edward the firſt, and upwards, the pleadings were plain & ſenſible, but nothing curious, evermore having chief reſpect to matter, and not to forms of words, and were often holpen with a Quæſitum eſt, and then the queſtions moved by the Court, and the anſwers by the parties, were alſo entred into the Roll. But even in thoſe days the forms of the Regiſter of Original writs were then punctually obſerved, and matters in law excellently debated and reſolved; and where any great difficulty was, then it was reſolved by all the Judges & Sages of the law (who were for matters in law called Concilium Regis) and their aſſembly and reſolution was entred into the Roll. As for example, In the great caſe in a Quare impedit, between the King & the Prior of Worceſter, concerning an Appropriation, whether it were a Mortmain, the Record ſaith, Ad quem diem venit prædictus Prior per Attornatum ſuum, &c. Et examina-

Hil.32 E.1.Cor.Reg.in fine Rotul.

examinatis & intellectis recordo & proceſſu coram toto Concilio tam Theſaurario & Baronibus de Scaccario, quam Cancellario, ac etiam Juſticiariis de utroque Banco inſpecta cauſa, pro qua, pro Domino Rege dicunt, quod ad ipſum Regem pertinet præſentare, &c. conſideratum eſt, &c. For in thoſe days though the Chancellor and Treaſurer were for the moſt part men of the Church, yet were they expert and learned in the Laws of the Realm.

As for example, in the time of the Conqueror, Egelricus Epiſcopus Ciceſtrenſis, vir antiquiſſimus, & in Legibus ſapientiſſimus, as elſewhere I have ſaid.

(a) Nigidius Epiſcopus Elienſis, Hen.1. Theſaurarius, in temporibus ſuis incomparabilem habuit Scaccarii Scientiam, & de eadem ſcripſit optime.

(b) Henricus Cant. Epiſcopus, H. Dunelm' Epiſcopus, Willielmus Elienſis Epiſcopus, G. Roffenſ. Epiſcopus.

(c) Martinus de Patiſhul, Clericus, Decanus divi Pauli London', conſtitutus fuit capitalis Juſtic' de Banco, quia in legibus hujus Regni peritiſſimus.

(d) Will'us de Raleigh, Clericus, Juſticiarius Domini Regis.

(e) Johannes Epiſcopus Carlienſis, tempore H.3.
Robertus Paſſelwe Epiſcopus Ciceſtrenſis tempore H.3.

(f) Robertus de Lexintonio Clericus, conſtitutus capitalis Juſtic' de Banco.

(g) Johannes Britton, Epiſcopus Hereford.

(h) Henricus de Stanton, Clericus, conſtitutus fuit capitalis Juſticiarius ad placita; with many others. And ſo were divers and many of the Nobility, who when matters of great difficulty were brought into the Upper Houſe of Parliament by writ of Error, Adjournment, or other Parliamentary courſe, did by the aſſiſtance of the reverend Judges, who ever attended in that Court, judge and determine the ſame, as by former and ancient Records, & ſpecially by the ſaid Record of 5 R.1. doth manifeſtly appear; and therefore the Lords of Parliament were called for thoſe purpoſes, Concilium Regis, and like to the aforementioned Record there be very many.

(a) Ockam.fo.37.

(b) Paſch.5 R.1. Cor. Rege.

(c) 1 H.3. Rot.pat. Bract.ſæpe.

(d) Bract.ſæpe.

(e) 8 E.3.31.

(f) Rot.pat.14 H.3.

(g) Liber ejus de Legibus extat ſcript.temp. E.1.

(h) Rot.pat.17 E.2.

In the reign of Edward the third, Pleadings grew to perfection both without lameneſs and curioſity, for then the Judges and profeſſors of the Law were excellently learned, and then knowledge of the Law flouriſhed, The Sergeants of the Law, &c. drew their own pleadings, and therefore truly ſaid that reverend Juſtice Thirning, in the reign of H.4. that in the time of E.3. the Law was in an higher degree than it had been any time before; for (ſaith he) before that time the manner of Pleading was but feeble, in compariſon of that it was afterward in the reign of the ſame King.

11 H.4.3.

In the time of Hen. the ſixth the Judges gave a quicker ear to exceptions to Pleadings, than either their Predeceſſors did, or the Judges in the reign of Edward the fourth, when our Author wrote, in the reign of Queen Elizabeth, proviſion is made, That after Demurrer the Judges ſhall give judgment according to the right of the cauſe and matter in Law, without regarding any imperfection, defect, or want of form in any writ, Return, Plaint, Declaration, or other pleading or courſe of proceeding whatſoever, except ſuch as the party demurring ſhall ſpecially ſhew. In which act, Appeals and Indictments of Felony, Murder, or Treaſon, concerning mans life, and the forfeiture of his lands and goods, are excepted. An excellent and profitable Law concurring with the wiſdom and judgment of ancient and latter times, that have diſallowed curious and nice exceptions tending to the overthrow or delay of Juſtice; apices juris non ſunt jura: yet it is good for a learned profeſſor to make all things plain and perfect, and not to truſt to the after aid or amendment by force of any Statute, leſt his clients cauſe mattereth not therewith, and as it is in Phyſick, for the health of a mans body, ſo it is in remedies for the ſafety of a mans cauſe. In Law, Præſtat cautela quam medela.

(*) 36 E.3.c.15.46 E.3.21.Di.299.l.8.fo.161. lib.10.fol.31.

But now let us return to our Author.

Sect. 535, 536, 537.

ITem ſi ſoyent Seignior & tenant, meſque le ſeignior confirma leſtate que l' tenant ad en les tenements, uncore le Seigniorie entierment demurt

ALſo if there be Lord and tenant, albeit the Lord confirm the eſtate which the Tenant hath in the Tenements, yet the Seigniory remaineth entire to the

Lib.10.fo.88.Pl.Com. 421.

a le Sñr come il fuit advant. Lord as it was before.

Sect.536.

¶ EN meſme le manner eſt, ſi home ad un rent charge hors de certaine terre, & il confirma leſtate que le tenant ad en la terre, uncore demurt a le confirmor le rent charge.

IN the ſame manner is it, if a man hath a Rent charge out of certain Land, and he confirm the eſtate which the Tenant hath in the land, yet the Rent charge remaineth to the Confirmor.

Sect.536.

¶ EN meſme le manner eſt, ſi un home ad common de paſture en auter terre, ſil confirma eſtate de le tenant de la terre, rien departeſt de luy de ſon common, mes ceo nient obſtant le common demurt a luy come fuit advant.

IN the ſame manner it is, if a man hath common of paſture in other land, if he confirm the eſtate of the Tenant of the Land, nothing ſhall paſs from him of his Common; but notwithſtanding this, the Common ſhall remain to him as it was before.

¶ HEre is the ſixth caſe, wherein the Releaſe and the Confirmation do differ; for by the Releaſe of the Seignior, a rent charge or common are extinct. And ſo theſe three Sections be evident, and need no explication; ſaving that ſome do gather upon theſe two laſt Sections, and the next enſuing, that a man cannot abridge a rent charge or common of Paſture by a Confirmation, as he may do a rent ſervice, in reſpect of the privity between the Lord and Tenant; ſo as (ſay they) a tenure may be abridged by a Confirmation, but not a rent charge or common: and therefore Littleton beginneth the next Section with an Adverb adverſative, viz. (mes, but) &c. But a man may releaſe part of his rent charge, or common, &c.

Sect.538.

¶ MEs ſi ſoient Seignior & tenant, le quel tenant tient de ſon Seignior per le ſervice de fealtie & 20. s. ō rent, ſi le Seignior per ſon fait confirma leſtate le tenant, a tener per 12 d. ou per un denier, ou per un maile: en ceſt caſe le tenant eſt diſcharge

BUt if there be Lord and Tenant, which Tenant holdeth of his Lord by the ſervice of fealty and 20 ſhillings rent, if the Lord by his Deed confirm the eſtate of the Tenant to hold by 12. pence or by a penny, or by a half penny: In this caſe the Tenant is diſcharged of all the

¶ AND the reaſon wherefore no ſervice of another cannot be reſerved upon the Confirmation is, becauſe as long as the ſtate of the land continueth it cannot by the Confirmation of the Lord be charged with any new ſervice. So as it is evident that the Lord by his Confirmation may diminiſh and abridge the ſervices, but to reſerve upon the Confirmation new ſervices he cannot, ſo long as the former eſtate in the Tenancie continueth. And as where a Confirmation doth inlarge

28 E.3.92,93. 26 Aſſ. 37.6 Eliz. Dyer 230. b. 7 E.4.15.2.21 E.4.60. per Brian. 10 E.3 tit. avowry 100.

inlarge an eſtate in land, there ought to be priviti, as hath been ſaid; ſo regularly, where a confirmation doth abridge ſervices, there ought to be priviti alſo.

de touts les autres ſervices, & le rendra rein a le Seignior, forſque ceo q̃ eſt compriſe deins meſme le Confirmation.

other Services, and ſhall render nothing to the Lord, but that which is compriſed in the ſame Confirmation.

And therefore here Littleton putteth his caſe of Lord and Tenant between whom there is priviti. And therefore if there be Lord, Meſne and Tenant, the Lord cannot confirm the eſtate of the tenant to hold of him by leſſer ſervices, but this is void, for that there is no priviti between them, and a confirmation cannot make ſuch an alteration of tenures.

7 E. 3. 19. 22 E. 3. 18. 6.

And the caſe in 4 E. 3. maketh nothing againſt this opinion, for there the caſe in ſubſtance is this, John de Bonville held certain Lands of Ralfe Vernon, and before the Statute of Quia emptores terrarum, levied a Fine of the ſame lands to the Abbot of Cogſal and his ſucceſſors, to hold of the chief Lord (which was Ralfe Vernon) by the ſervices due and accuſtomed, Ralfe Vernon made a Charter to the ſaid Abbot in theſe words, Conceſſi etiam eidem Abbati & ſucceſſoribus ſuis relaxavi & quietum clamavi totum jus, &c. quod habeo, vel potero habere in omnibus tenementis quæ idem Abbas habet de dono Johannis de Bonville; Tenendum de me & hæredibus meis in puram & perpetuam Eleemoſynam. And adjudged that it was a good tenure in Frankalmoigne; which cauſe proveth nothing that the Lord Paramount may by his confirmation to the Tenant peravail extinct the Meſnalty (as it is abridged by Maſter Fitzherbert in the title of confirmation, Pl. 21.) for the immediate Lord did there make the ſaid Charter, and not any Lord Paramount. (And therefore it is ever good to relie upon the Book at large, for many times Compendia ſunt diſpendia, and Melius eſt petere fontes, quam ſectari rivulos.) And of this opinion was Maſter Plowden upon good adviſement and conſideration.

4 E. 3. 19.

And here is the ſeventh caſe, wherein the releaſe and confirmation doth agree, for if there be Lord and tenant by Fealty and twenty ſhillings rent, the Lord may releaſe all his right in the Seignior or in the tenancie, ſaving fealty and ten ſhillings rent, but he cannot ſave a new kind of ſervice, for he may as well abridge his ſervices upon a Releaſe as upon a Confirmation. And as there is required priviti when the Lord abridgeth the ſervices of his Tenant by his confirmation: ſo muſt there be alſo when the Lord by his releaſe abridgeth the ſervices of his Tenant. And therefore the Lord Paramount cannot releaſe to the Tenant peravaile ſaving to him part of his ſervices, but the ſaving in that caſe is void.

4 E. 3. 19. 9 E. 2. 1, 12. E. 4. 11, 16 E. 3. fines 4. 6 Eliz. Dyer 230.

¶ *Et rendra rien a ſon Seignior forſque ceo que eſt compriſe*, &c. which words are thus to be underſtood, that the tenant ſhall not render any more Rent or annual ſervice to the Lord than is contained in the Deed; but other things, notwithſtanding the ſaid confirmation, the tenant ſhall yeeld to the Lord, as relief, ayde pur file marier, and ayde pur faire fitz Chivalier, becauſe theſe are incidents to the tenure that remain, and ſhall not be diſcharged without ſpecial words, by the general words, of all other Actions, ſervices and Demands. And ſo if a man hold of me by Knights Service, Rent, Suit, &c. and I releaſe to him all my right in the Seignior, excepting the Tenure by Knights ſervice, or confirm his eſtate to hold of me by Knights Service only for all manner of Services Exactions, and Demands; yet ſhall the Lord have the ward, Marriage, Relief, Ayde pur file marier, & pur faire fitz Chivalier, for theſe be incidents to the tenure that remain. But it is holden, that if a man make a gift in tail by deed reſerving two ſhillings rent a luy & ſes heires pro omnibus & omnimodis ſervitiis, exactionibus ſecularibus, & cunctis demandis, if the Donè die his heir of full age, the Donor ſhall have no relief, becauſe in the original Deed of the gift in tail it is expreſly limited, that by the ſervice of two ſhillings Rent he ſhall be quit of all Demands, (and Relief lieth in Demand) and by reaſon of thoſe words, ſay they, there cannot any Relief become due, but ſome do hold the contrary in that caſe.

Britton f. 57, 177. 40 E. 3. 2. 14, 17, 48. 18 b. 3. 26. 50. Aſſ. 6. 14 H. 4 6.

13 R. 2, tit. avowry 89. Nota dictum Fitzh.

Sect. 539.

¶ Mes ſi le Seignior voile per fait de confirmation, que le tenant en ceſt cas doit

But if the Lord will by his Deed of Confirmation that the Tenant in this caſe ſhall yield render

render a luy un eſperver, ou un roſe annualment a tiel feaſt, &c. ceſt confirmation eſt voide, pur ceo que il reſerva a luy un novel choſe que ne fuit parcel de ſes ſervices devant la confirmation, & iſſint le ſeignior poit bien per tiel confirmation abridger les ſervices, per queux le tenant tient de luy, mes il ne poit reſerver a luy novel ſervices.

to him a Hawk or a roſe yearly at ſuch a Feaſt, &c. this confirmation is void, becauſe he reſerveth to him a new thing which was not parcel of his ſervices before the confirmation: And ſo the Lord may well by ſuch confirmation abridge the ſervices by which the tenant holdeth of him, but he cannot reſerve to him new ſervices.

¶ This upon that which hath bẽn ſaid before in the next preceding Section is evident and needeth no further explication.

Sect. 540.

¶ Item, ſi ſoit ſeignior, meſne, & tenant, & le tenant eſt un Abbe, que tient de meſne per certain ſervices annualment, le quel nad aſcun cauſe daver acquitance envers ſon meſne pur porter briefe de Meſne, &c. en ceſt cas, ſi le meſne confirma leſtate q̃ l'Abbe ad en la terre, a aver & tener la terre a luy et a ſes ſucceſſors en frankalmoigne, etc. en ceſt cas le confirmation eſt bone, et donques l'Abbe tiendra de la meſne en frankalmoigne, Et la cauſe eſt pur ceo que nul novel ſervice eſt reſerve, car touts les ſervices eſpecialment ſpecifies ſont extincts, et nul rent eſt reſerve al meſne forſque que l'Abbe tient de luy la terre, et ceo fiſt il devant la confirmation, car celuy que tient en frankalmoigne, ne doit faire aſcun corporal ſervice, iſſint que per tiel confirmation il appiert, que le meſne ne reſerva a luy aſcun novel ſervice, mes que les tenements ſerront tenus de luy come ceo fuit devant. Et en ceſt

ALſo, if there be Lord, Meſne and tenant, and the tenant is an Abbot that holdeth of the meſne by certain ſervices yearly, the which hath no cauſe to have acquittance againſt his meſne for to bring a Writ of Meſne, &c. in this caſe, if the Meſne confirm the Eſtate that the Abbot hath in the land, to have and to hold the land unto him & his ſucceſſors in frankalmoigne, or free alms, &c. in this caſe this confirmation is good, and then the Abbot holdeth of the meſne in frankalmoigne: and the cauſe is, for that no new ſervice is reſerved, for all the ſervices ſpecially ſpecified be extinct, and no rent is reſerved to the Meſne, but the Abbot ſhall hold the land of him as it was before the confirmation; for he that holdeth in frankalmoigne ought to do no bodily ſervice; ſo that by ſuch confirmation it appeareth the meſne ſhall not reſerve unto him any new ſervice, but that the land ſhall be holden of him as it was before, and in this

caſe

caſe l' Abbe avera un briefe de meſne, ſil ſoit diſtreine en ſon default per force de le dit confirmation, iou per caſe il ne puiſſoit aver un briefe adevant, &c.

caſe the Abbot ſhall have a Writ of Meſne if he be diſtrained in his default, by force of the ſaid confirmation, where percaſe he might not have ſuch a writ before.

4 E.3.19. 22 E.3.15.b. the Lord Wakes caſe. 10 E.3.5. 15 E. Confirmat. 8. 4 E.3.19,20. F.N.B.136.h & q. 4 E.4 35. 31 E.1. Meſne 55. 11 E.3.Avowry 100. 22 E.3.13.b 30 E.3.13. 16 H.3.Avowry 243.

HEre our Author having ſeen the former Books putteth his caſe, that the meſne maketh the Confirmation to hold in Frankalmoigne, and not the Lord paramount.

Et en ceſt caſe l' Abbe avera briefe de meſne. Here is to be noted, that upon a Confirmation to hold in Free almoigne there lieth a writ of Meſne, albeit the cauſe of acquital begin after the Seignior. And ſo upon ſuch a Confirmation the Tenant ſhall have, Contra formam feoffamenti.

Sect. 541.

45 E.3. fo. 30 H.6. tit. barre 59. Regiſtrum 102. 1 H.6.cap.5.

HEre is to be obſerved a diverſity betwen the cuſtody of the body of a ward within age, and a right of inheritance in the body of a villein in groſs for a man may be put out of poſſeſſion of the cuſtody of his ward, but not of his villein in groſs, no more than a man can be of his priſoner which he hath taken in war.

Brook tit. Propertie 28.

Alſo of things that are in grant, as Rents, Commons, and the like, it is at the election of the party whether he will be diſſeiſed of them or no, as ſhall be ſaid after in his proper place. But of a Villein in groſs he cannot at all be diſſeiſed. (a) Non valet confirmatio niſi ille qui confirmat ſit in poſſeſſione rei vel juris unde fieri debet confirmatio, & eodem modo niſi ille cui confirmatio fit, ſit in poſſeſſione.

(a) Bracton lib. 2.59. b. 24 E.3. tit. diſcont. 16. 42 E.3.18.40 E.3. 7. 43 E.3.4.9 E.4.38. Dyer 10 Eli. Growches caſe.

And materially doth Littleton put his caſe of a villein in groſs, for of a villein regardant to a Manor, the Lord may be put out of poſſeſſion; for by putting him out of poſſeſſion of the Manor which is the principal, he may likewiſe be put out of poſſeſſion of the Villein regardant which is but acceſſory. And by the recovery of the Manor the villein is recovered. But if another doth take away my villeine in groſs or regardant, he gaineth no poſſeſſion of him. And this doth well appear by the writ of Nativo habendo, for that writ is not brought againſt any perſon incertain ℭ becauſe no man can

Item ſi jeo ſue ſeiſie de villein come de villein en en gros, & un auter luy prent hors de ma poſſeſſion, enclaimãt luy deſtre ſon villein la ou il navoit alcun droit daver luy come ſon villein, & puis jeo confirma a luy leſtate q̃ il ad en mon villeine, ceſt confirmation ſemble void, pur ceo que nul poit aver poſſeſſion de un home come de villein en groſſe, ſi non celuy que ad droit de luy aver come ſon villein en groſſe. Et iſſint entant que celuy a que le confirmation fuit fait ne fuit ſeiſie de luy come de ſon villeine a le temps de cõfirmation fait, tiel cõfirmation eſt void.

ALſo if I be ſeiſed of a villein as of a villeine in groſs, and another taketh him out of my poſſeſſion, claiming him to be his villeine there where he hath no right to have him as his villein, and after I confirm to him the eſtate which he hath in my villeine, this confirmation ſeemeth to be void, for that none may have poſſeſſion of a man as of a villein in groſs, but he which hath right to have him as his villein in groſs. And ſo in as much as he to whom the confirmation was made, was not ſeiſed of him as of his villein at the time of the Confirmation made, ſuch confirmation is void.

can gain the poſſeſſion of him. But the writ is to this effect; Rex vic. Salutem præcipimus tibi quod juſte & ſine dilatione habere facias A. B. nativum & fugitivum ſuum, &c. ubicunque inventus fuerit, &c. & prohibemus ſuper forisfacturam noſtram, ne quis eam injuſte detineat: ſo as detain him one may, but to poſſeſs himſelf of him, and to diſpoſſeſs the Lord he cannot.

And if a man might have been diſpoſſeſſed of a Villein in groſs, or of a Villein regardant (unleſs he be diſpoſſeſſed of the Manor alſo, as hath been ſaid) the Law would have given a remedy againſt the wrong-doer, as the Law doth in the caſe of a ward.

Now ſeeing it doth appear by our books (a) and by Littleton himſelf by implication ſpeaking only of a villein in groſs) that if a man be diſſeiſed of the Manor, whereunto the Villein is regardant, he is out of poſſeſſion of his villein, and ſo an Advowſon appendant, and the like. Hereby (Littleton putting his caſe of a villein in groſs) and by divers Authorities, a point controverted in our Books (*) is reſolved, viz. that by the grant of the Manor without ſaying, Cum pertinentiis, the Villein regardant, Advowſon appendant, and the like do paſs; for if the Diſſeiſor ſhall gain them as incidents to the Manor, whoſe eſtate is wrongful, A multo fortiori the Feoffee, who cometh to the eſtate by lawful conveyance, ſhall have them as incidents. But where the entry of the diſſeiſee is lawful, he may ſeiſe the villein regardant, or preſent to the Advowſon, &c. before he enter into the Manor; otherwiſe it is where his entry is not lawful; and ſo are the antient Authors (b) to be intended.

(a) Bracton, f. 243. Britton, f. 126.

(*) 9 E. 4. 38. 3 H. 4. 15. 13 E. 3. 44. 16 E. 3. Quar. Imp. 146. 19 R. 2. Treſp. 255. 19 H. 6. 33. 21 H. 6. 9. 33 H. 6. 33. 5 H. 7. 36 38 10 H. 7. 9. F. N. B. 33. q. 22 H. 6. 33. per Moyle. 30 E. 3. 31. 39 E. 3. 21. 43 E. 3. 12.

(b) Bracton, f. 242, 243. Britton, f. 126. Flet. ac.

Sect. 542.

¶ MEs ceſt cas, ſi tiels parols fueront en le fait, &c. Sciatis me dediſſe & conceſſiſſe tali, &c. talem villanum meum, ceſt bone, mes ceo urera per force et voy de grant, & nemy per voy de confirmation, &c.

BUt in this caſe, if theſe words were in the deed, &c. *Sciatis me dediſſe & conceſſiſſe tali, &c. talem villanum meum*, this is good; but this ſhall enure by force and way of grant, and not by way of confirmation, &c.

¶ HEre it is to be obſerved, that a man hath an inheritance in a villein, whereof the wife of the Lord ſhall be endowed as hath been ſaid, for in him a man may have an eſtate in Fee, or Fee-tail, for life or years. And therefore Littleton is here to be underſtood, that in the Grant there were theſe words (his heirs) or elſe nothing paſſed but for life, as of other things that lie in Grant.

2 H. 6. F. N. B. 77. a. b.

24 E. 3. Deſcent. 16.

Sect. 543.

¶ ET aſcun foits ceux verbs Dedi & conceſſi, ureront per voy dextinguiſhment del chose done ou grant, ſicome un tenant tient de ſon ſeignior per certeine rent, et le ſeignior granta per ſon fait a le tenſt et a ſes heires le rent, &c. ceo urera a le tenſt per voy dextinguiſhment, car per ceſt grant le rent eſt extinct, &c.

AND ſometimes theſe Verbs *Dedi & Conceſſi*, ſhall enure by way of extinguiſhment of the thing given or granted; as if a tenant hold of his Lord by certain rent, and the Lord grant by his deed to the tenant and his heirs the rent, &c. this ſhall enure to the tenant by way of extinguiſhment; for by this grant the rent is extinct, &c.

3 E. 3. 12. Aſſ. 7.

And this grant of the rent ſhall enure by way of releaſe.

Sect. 544.

¶ EN meſme le maner eſt, lou un ad un rent charge hors de certaine terre, & ſi graunta al tenant de la terre le Rent charge, &c. et la cauſe eſt, pur ceo que appiert, per les parols del grant, que le volunt le donor eſt, que le tenant abera le rent, &c. & entant que il ne puit aver ne perceiver aſcun rent hors de ſon terre demeſne, pur ceo le fait ſerra intendue et pris pur l' pluis advantage et availe pur le Tenant que puit eſſe pris, & ceo eſt per voy dextinguiſhment.

IN the ſame manner it is, where one hath a Rent Charge out of certain Land, and he grant to the Tenant of the Land the Rent-charge, &c. And the reaſon is, for that it appeareth by the words of the Grant, That the will of the Donor is, That the Tenant ſhall have the rent, &c. and inaſmuch as he cannot have or perceive any rent out of his own Land, therefore the deed ſhall be intended and taken for the moſt advantage, and avail for the tenant, that it may be taken, and this is by way of extinguiſhment.

34 H.6.fol.42. ¶ BUt if the grantée of the rent-charge granteth it to the Tenant of the Land and a ſtranger, it ſhall be extinguiſhed but for the moiety: and ſo it is of a Seigniory.

Sect. 545.

¶ ITem, ſi jeo leſſa Terre a un home pur term dans, & puis jeo confirma ſon eſtate ſans pluis paroix mitter en le fait, per cel il nad pluis greinder eſtate que pur terme dans, ſicome il avoit adevant.

ALſo, if I let Land to a man for term of years, and after I confirm his eſtate, without putting more words in the Deed, by this he hath no greater eſtate than for term of years, as he had before.

Sect. 546.

¶ MEs ſi jeo releſſa a luy mon droit que jeo aye en le terre ſans pluis parols mitter en le fait, il ad eſtate de franktenement. Iſſint poyes entend, mon fits, divers grand diverſities perenter Releales & Confirmations.

BUt if I releaſe to him all my right which I have in the Land, without putting more words in the Deed, he hath an eſtate of freehold. So thou mayeſt underſtand (my ſon) divers great diverſities between Releaſes and Confirmations.

In theſe two Sections is the ſeventh caſe wherein a releaſe and Confirmation do differ.

Sect.

Sect. 547.

¶ ITem, ſi jeo eſteant deins age leſſa terre a un auꝰ pur terme de xx. ans, & puis granta le terre a un auter p terme de x. ans, iſſint il granta forſque parcel de ſon terme, en ceſt caſe quant jeo ſue de pleine age, ſi jeo releſſa al Grantee de mon leſſee, &c. ceſt releaſe eſt void, pur ceo que il ny ad aſcun privity perenter luy et moy, &c. Mes ſi jeo confirme ſon eſtate, donque ceſt confirmation eſt bone. Mes ſi mon Leſſee granta tout ſon eſtate a un auꝰ, donqꝫ mõ releaſe fait a l'grantee ẽ bone et effectual.

ALſo, if I being within age let land to another for term of xx years, and after he granteth the land to another for term of ten years, ſo he granteth but parcel of his term: In this caſe when I am of full age, if I releaſe to the Grantee of my Leſſee, &c. this Releaſe is void, becauſe there is no privity between him and me, &c. but if I confirm his eſtate, then this confirmation is good. But if my leſſee grant all his eſtate to another, than my releaſe made to the Grantee is good and effectual.

¶ HEre are two things to be obſerved: First, That the Leaſe of an infant in this caſe is not void but voidable. Secondly, this is the eigheth caſe put by Littleton, wherein the Releaſe and Confirmation do differ. 7 E.4.6.b.18E.4.1. 9 H.7.14.

Sect. 548.

¶ ITem, ſi home granta un rent charge iſſuant hors de ſon terre a un auter pur terme de ſon vie, & puis il confirma ſon eſtate en le dit rent, a aver & tener a luy en fee taile ou en fee ſimple, ceſt Confirmation eſt void, quant a enlarger ſon eſtate, pur ceo que celuy que confirme navoit aſcun reverſion en le rent.

ALſo, if a man grant a Rent-charge iſſuing out of his Land to another for term of his life, and after he confirmeth his eſtate in the ſaid rent; To have and to hold to him in fee tail or in fee ſimple, this Confirmation is void as to inlarge his eſtate, becauſe he that confirmeth hath not any reverſion in the Rent.

¶ HEre the diverſity is apparent, between a rent newly created, and a rent in eſſe which needeth no explication. Only this is to be obſerved. That Littleton intendeth his Deed of Confirmation not to contain any clauſe of Diſtreſs; for otherwiſe, as to the Confirmation the Deed is void, but the clauſe of Diſtreſs doth amount to a new grant, as in the Chapter of Rents hath been ſaid. 21 E.3.47. 15E.4.8.b. Pl.Com.35.8 H.4.19.

Sect. 549.

¶ MEs ſi home ſoit ſeiſie en fee de Rent ſervice ou de

BUt if a man be ſeiſed in fee of a rent-ſervice, or rent-charge,

rent charge, & il grant le rent a un auter pur terme de vie, et le tenant atturna, et puis il confirma lestate de le grantee en fee taile ou en fee simple, cest confirmation est bone, quant a enlarger son estate, solonqz les parols le cõfirmation, pur ceo que celuy q̃ confirma al temps de confirmation avoit un reversion del rent.

and he grant the rent to another for life, and the tenant attorneth, and after he confirmeth the estate of the grantee in fee tail, or in fee simple, this confirmation is good, as to enlarge his estate according to the words of the confirmation, for that he which confirmed at the time of confirmation had a reversion of the rent.

HEre is the eighth case wherein the release and Confirmation doth agree; and it is here to be observed, that to the grant of the estate for life, Littleton doth put an attornment, because it is requisite: but to the Confirmation to the Grantee of the rent to enlarge his estate, there is none necessary; and therefore he putteth none: but of this more shall be said in the Chapter of Attornment, Sect. 556, 575.

Sect. 550.

MEs en cas avandit lou home graunt un rent charge a un auter pur terme de vie, sil voile q̃ le grauntee averoit estate en le taile, ou en fee, il covient que le fait de grant del rent charge pur terme de vie, soit surrender ou cancel et donques de faire un novel fait dautiel rent charge, A aver et perceiver si le grantee en le taile, ou en fee, &c. Ex paucis plurima concipit ingenium.

BUt in the case aforesaid where a man grants a rent charge to another for term of life, if he will that the grantee should have an estate in taile, or in fee, it behoveth that the deed of grant of the rent-charge for term of life be surrendred or cancelled, and then to make a new deed of the like rent charge, To have and perceive to the grantee in tail or in fee, &c. *Ex paucis plurima concipit ingenium.*

Vid Sect. 336.

Surrender ou cancell. Note, by cancellation of the Deed, the rent which lieth only in grant ceaseth (as here it appeareth) as well as by the Surrender. And the reason wherefore (if the Grantor make a new grant of the rent, and not enlarge it by way of confirmation, as Littleton must be intended) the deed should be surrendred or cancelled, is, lest the Grantor should be doubly charged, viz. with the old grant for life, and with the new grant in fee, or as hath been said, the Grantor may grant to the Grantee for life and his heirs, that he and his heirs shall distrain for the rent, &c. and this shall amount to a new grant, and yet amount to no double charge, whereof you may see before in the Chapter of Rents.

CHAP. 10. Of Attornment. *Sect.551.*

ATtornment eſt, come ſi ſoit Seignior & tenant, & le Seignior voile granter per ſon fait les ſervices de ſon tenant a un auter pur terme dans, ou pur terme de vie, ou en taile, ou en fee, il covient que le tenant atturna al grauntée en le vie le grantor, per force et vertue del grant, ou autrement le grant eſt void. Et attornement eſt nul auter en effect forſque quant le tenant ad oye del grant fait per ſon Seignior, q̄ meſme le tenant agreea per parol a le dit grant, ſicome adire a le grauntée, jeo moy agree a le grant fait a vous, &c. ou jeo ſue bien content de le graunt fait a vous, mes le pluis common attornment eſt, adire, Sir, jeo atturna a vous per force del dit graunt, ou jeo deveigne vre tenant, &c. ou liverer al grantee un denier, ou un maile, ou un farthing per voy dattornement.

ATtornment is, as if there bee Lord and tenant, and the Lord will grant by his Deed the ſervices of his Tenant to another for term of years, or for term of life, or in tail, or in Fee, the tenant muſt attorne to the Grantee in the life of the grantor by force and vertue of the grant, or otherwiſe the grant is void. And attornment is no other in effect, but when the tenant hath heard of the Grant made by his Lord, that the ſame tenant do agree by word to the ſaid grant, as to ſay to the grantee, I agree to the Grant made to you, &c. or I am well content with the grant made to you; but the moſt common attornment is, to ſay, Sir, I attorn to you by force of the ſaid Grant, or I become your Tenant, &c. or to deliver to the Grantee a penny, or a half-penny, or a farthing, by way of Attornment.

ATtornment is an agreement of the Tenant to the grant of the Seignior, or of a rent, or of the Donée in tail, or Tenant for life or years to a grant of a Reverſion or Remainder made to another. It is an antient word of Art, and in the Common Law ſignifieth a torning or attorning from one to another; we uſe alſo attornamentum as a Latine word, and Attornare to attorn. And ſo Bracton (a) uſeth it, Item videndum eſt, ſi Dominus attornare poſſit alicui homagium & ſervitium tenentis ſui contra voluntatem ipſius tenentis, & videtur quod non.

Bracton, lib 2. fol. 81. Brit. f. 105. b. 176. & 177 Flera. l 3. cap. 6.

(a) Bracton, l. 2. f. 81. b. Fleta, Britton ubi ſupra.

And the reaſon why an Attornment is requiſite, is yeelded in old Books to be, Si Dominus attornare poſſit ſervitium tenentis contra voluntatem tenentis, tale ſequeretur inconveniens, quod poſſit eam ſubjugare capitali inimico ſuo, & per quod teneretur Sacramentum fidelitatis facere ei qui eum damnificare intenderet.

Bracton, l. 2. f. 81. b. Britton, ubi ſupra.

¶ *Il covient que le tenant attorna al grantee en la vie del grantor, &c.* And ſo muſt he alſo in the life of the Grantée, and this is underſtood of a Grant by Deed. And the reaſon hereof is, for that every Grant muſt take effect as to the ſubſtance thereof in the life both of the Grantor and the Grantée. And in this caſe if the Grantor dieth before attornment, the Seignior, Rent, Reverſion, or remainder deſcend to his heir; and therefore after his deceaſe the Attornment cometh too late, ſo likewiſe if the Grantee dieth before Attornment, an Attornment to the

Vide Litt. f. 128. 11 H. 7. 19.

Lib. 1. fo. 104, 105. Shelleys caſe.

43. Aſſ. 19. 34 H. 6. 2 20 H. 6. 7.

the heir is void, for nothing deſcended to him; and if he ſhould take, he ſhould take it as a Purchaſor, where the heirs were added but as words of limitation of the eſtate, and not to take as Purchaſors.

34 H.6.7.10.H.6.7. Bracton, lib.2. f.31,82. acc.

But if the grant were by fine, then albeit the Conuſor or Conuſee dieth, yet the grant is good. For by fine levied the ſtate doth paſs to the Conuſee and his heirs, and the attornment to the Conuſee or his heirs at any time to make priuity to diſtrain is ſufficient. But all this is to be taken as Littleton underſtood it, viz. of ſuch grants as have their operation by the Common Law. For ſince Littleton wrote, if a fine be levied of a Seigniory, &c. to another, to the uſe of a third perſon and his heirs, he and his heirs ſhall diſtrain without any Attornment, becauſe he is in by the Statute of 27 H. 8. cap.10. by transferring of the ſtate to the uſe, and ſo he is in by act in Law.

Lib.6.f.68. Sir Moyle Finches caſe.

27 H.8.cap.16. Vide Sect.584.

And ſo it is, and for the ſame cauſe, if a man at this day by Deed indented and inrolled, according to the Statute, bargaineth and ſelleth a Seigniory, &c. to another, the Seigniory ſhall paſs to him without any Attornment; and ſo it is of a Rent, a Reverſion, and a Remainder. So as the Law is much changed, and the antient priviledge of Tenants, Donees, and leſſees, much altered concerning attornment ſince Littleton wrote.

But if the Conuſee of a fine before any attornment by Deed indented and inrolled bargaineth and ſetleth the Seigniory to another, the bargainee ſhall not diſtrain, becauſe the bargainor could not diſtrain. Et ſic de ſimilibus, for nemo poteſt plus juris ad alium transferre quam ipſe habet. Vide Sect.149. where upon a Recovery, the Recoveror ſhall diſtrain and avow without Attornment.

Lib.6.ubi ſupra. Vide Sect.149. 49 E.3.4. 34 H.6.8. 6 E.4.13.

A grant to the King, or by the King to another, is good without Attorment, by his Prerogative.

¶ *Attornement eſt nul auter en effect, &c.* It is to be underſtood, that there be two kinds of Attornment, viz. an attornment in deed or expreſs, and an attornment in Law, or implicite; of attornment expreſs, or in deed, Littleton ſpeaketh here, and of attornment in law he ſpeaketh after in this chapter. And to both theſe kinds of attornments there is an incident inſeparable, that is, that the tenant hath notice of the grant; for (an attornment being an agreement or conſent to the grant, &c.) he cannot agree or conſent to that which he knoweth not. And the uſual pleading is, to which grant the Tenant attorned. And therefore if a Bayly of a Mannor who uſed to receive the rents of the Tenants, purchaſe the Mannor, and the Tenants having no notice of the purchaſe, continue the payment of the rents to him, this is no attornment. So if the Lord levy a fine of the Seigniory, and by fine take back an eſtate in fee, the tenant continueth the payment of the rent to the firſt Conuſor without notice of the fines, this is no attornment. But it is to be known, that there be two kinds of notices, viz. a notice in deed or expreſs, whereof Littleton here ſpeaketh, when he ſaith, that the tenant agreeth to the grant, and a notice in law or implied, whereof Littleton hereafter ſpeaketh in this Chapter.

Lib.2.f.67.b. Tookers caſe. 13 El. Dier 302. Tookers caſe, ubi ſupra Lib.2. Tookers caſe, ubi ſupra.

¶ *Del grant fait per ſon Seignior.* Here is to be ſeen, when the thing granted is altered, what becometh of the attornment.

If there be Lord, Meſne and Tenant, and the Meſne grant over his Meſnalty by Deed, the Lord releaſeth to the tenant, whereby the Meſnalty is extinct, and there is a rent by ſurpluſage, and attornment to the grant of this rent ſeck is good, although the quality of that part of the rent is altered, becauſe it is altered by Act in law.

If a reverſion of two Acres be granted by Deed, and the Leſſor before attornment levy a fine of one of them, and the Tenant attorn to the Grantee by Deed, this is good for the other Acre.

(a) 18 E.3. tit. variance 63. 22 E.3.18. Tookers caſe, ubi ſupra.

(a) If the Reverſion be granted of three Acres, and the leſſee agree to the ſaid grant for one acre, this is good for all three; and ſo it is of attornment in Law, if the reverſion of three acres be granted, and the Leſſee ſurrender one of the Acres to the Grantee, this attornment in a barr ſhall be good for the whole reverſion of the three acres, according to the Grant.

¶ *Et le tenant Agrea.* Hereafter in this Chapter Littleton doth teach what manner of Tenant ſhall attorn.

¶ *Agrea per parol, &c.* And ſo he may, and more ſafely by his Deed in writing.

39 H.6.3. Tookers caſe. ubi ſupra.

¶ *Sicome adire a le grantee, &c.* Here is to be ſeen to what manner of Grantees the attornment is good. Regularly the attornment muſt be according to the grant either expreſſe or impliedly, of the firſt Littleton hath here ſpoken.

Impli-

, Impliedly, as if a reverſion be granted to two by Deed, and the Leſſee attorn to one of them according to the grant, this attornment is good, but not to veſt the reverſion only in him to whom attornment is made, but it ſhall enure to both the Grantees for that is according to the grant, and for that it cannot veſt the reverſion only in him to whom the attornment is made. And ſo it is if one Grantee dieth, the Attornment to the Survivor is good.

If the Lord grant by Deed his Mignory to A. for life, the remainder to B. in fee. A. dieth and then the tenant attorn to B. this Attornment is void, becauſe it is not according to the grant, for then B. ſhould have a remainder without any particular eſtate.

If a reverſion be granted to a man and a woman, they are to have moyeties in law, but if they entermarry and then attornment is had, they ſhall have no moyeties, (and yet by the purport of the grant they are to have moyeties) becauſe it is by act in Law.

If a feme grant a reverſion to a man in fee, and marry with the Grantee, the Leſſee Attorn to the husband, this is a good Attornment in law to the husband.

If a reverſion be granted by Deed to the uſe of I. S. and the leſſee hearing the Deed read, or having notice of the contents thereof, attorn to Ceſtuy que uſe, this is an implied Attornment to the Grantee.

If a reverſion be granted for life, the remainder in tail, the remainder in fee, the Attornment to the Grantee for life ſhall enure to them in the remainder to veſt the remainder in them.

Tookers caſe, ubi ſupra. 11 H. 7. 12. 20 H. 6. 7.

Tookers caſe, ubi ſupra. Pl. Com. 187. 433.

2 R. 2. tit. Attornment 8. Lib. 4. f. 61. Hemlings. caſe.

Temps E. 1. Atto. 8. 12. 18 E. 4. 7.

And in thoſe caſes, if the Tenant ſhould ſay, that I do attorn to the Grantee for life, but that it ſhall not benefit any of them in remainder after his death, yet the attornment is good to them all; for having attorned to the Tenant for life, the Law which he cannot controul doth veſt all in the remainder. And of this more ſhall be ſaid hereafter in this Chapter.

Littleton here putteth five examples of an expreſs Attornment; but of them the laſt is the beſt, becauſe the ear is not only a witneſs of the words, but the eye of the delivery of the penny, &c. and ſo there is dictum & factum. And any other words which import an agreement or aſſent to the grant, do amount to an attornment. And albeit theſe five expreſs attornments be all ſet down by Littleton, to be made to the perſon of the Grantee; (b) yet an attornment in the abſence of the Grantee is ſufficient; for if he doth agree to the grant either in his preſence or in his abſence, it is ſufficient.

(b) Lib. 2. 68. 69. Tookers caſe. 28 H. 8. tit. Attornment. Br. 40.

Sect. 552.

¶ ITem, ſi le Seignior graunt l'ſervice de ſon tenant a un home, et puis per un fait portant un darreine date, il granta meſmes les ſervices a un auter, et l'tenant attorne a le ſecond grantee, ore le dit grauntee ad les ſervices, & comt que apres le Tenant voile attorner a le primer grantee, ceſt clerement void, &c.

ALſo, if the Lord grant the ſervice of his Tenant to one man, and after by his Deed bearing a latter date he grant the ſame ſervices to another, and the tenant attorn to the ſecond Grantee, now the ſaid Grantee hath the ſervices; and albeit afterwards the Tenant will attorn to the firſt Grantee, this is clearly void, &c.

¶ HEre it is to be obſerved, that Littleton expreſſeth not what Eſtate is granted, and very materially; for if the former grant were in Fee, and the latter grant were for life, and the Tenant doth firſt attorn to the ſecond Grantee, he cannot after attorn to the firſt Grantee, to make the Fee-ſimple paſs, for that ſhould not be according to the grant; but in that caſe the Attornment to the firſt is countermanded. And ſo it is if a Reverſion expectant upon an Eſtate for life be granted to another in Fee, and after the Grantor before Attornment confirm the eſtate of the Leſſee in tail, the Attornment to the Grantee for the fee ſimple is void.

In the ſame manner, if a Reverſion upon an eſtate for years be granted in fee, and the leſſor confirm the eſtate of the Leſſee for life, he cannot afterward attorn.

If

11 H.7 19. 2 R.2. ubi ſupra.
P.3.El.Bendloes.
Hemlings caſe, ubi ſupra

If a Feme ſole maketh a leaſe for life or years reſerving a rent, and granteth the Reverſion in fee, and taketh husband, this is a Countermand of Attornment.

Where our Author putteth his caſe of the whole reverſion, if two Coparceners be of a reverſion, and one of them granteth the moiety by Fine, the Conuſee ſhall have a Quid juris clamat for the moiety.

11 H.7.12.

If in the caſe that our Author here putteth of ſeveral grantees, if the Tenant attorn to both of them, the Attornment is void, becauſe it is not according to the Grant. If a reverſion be granted for life, and after it is granted to the ſame Grantee for years, and the Leſſee attorneth to both Grants, it is void for the incertainty: A multo fortiori, if the Lord by one Deed grant his Seigniory to I. Biſhop of London and to his heirs, and by another Deed to I. Biſhop of London, and to his Succeſſors, and the Tenant attorn to both grants, the Attornment is void, for albeit the Grantee be but one, yet he hath ſeveral capacities, and the grants are ſeveral, and the attornment is not according to either of the grants.

But if A. grant the reverſion of Black-acre or White-acre, and the Leſſee attorn to the Grant, and after the Grantee maketh his election, this Attornment is good; for albeit the ſtate was incertain, yet he attorned to the Grant in ſuch ſort, as it was made; and ſo note a diverſity between one grant and ſeveral grants; and obſerve in this caſe an Attornment good in expectation, and yet nothing paſſed at the time of the Attornment, but by the election ſubſequent.

Sect. 553.

Temps. E.2. Attornment, 48 E.3.15.

HEre it is to be obſerved, that when a man maketh a feoffment of a Mannor, the ſervices do not paſs, but remain in the Feoffor until the Freeholders do attorn, and when they do attorn, the attornment ſhall have relation to ſome purpoſe, and not to other. For albeit the Attornment be made many years after the feoffment; yet it ſhall have relation to make it paſs out of the Feoffor; Ab initio even by the Livery upon the feoffment, but not to charge the tenants with any mean arrerages, or for waſte in the mean time, or the like.

ITem, ſi home ſoit ſeiſie de un mannor, quel Mannor eſt parcel en demeſne, et parcel en ſervice, ſi l' voile aliener cel mannor a un auter, il covient que per force del alienation, que touts les tenants que teignent del alienor, come de ſon Mannor, attornerent al alienée, ou auterment les ſervices, demurront continualment en lalienor, forprise tenants a volunte, car il ne beſoigne que Tenants a volunte atturnent ſur tiel alienation, &c.

ALſo, if a man be ſeiſed of a Mannor, which Mannor is parcel in demeſne, and parcel in ſervice, if he will alien this Mannor to another, it behoveth that by force of the alienation, all the Tenants which hold of the alienor as of his Mannor do attorn to the alienee, or otherwiſe the ſervices remain continually in the alienor, ſaving the tenants at will; for it needeth not that Tenants at will do attorn upon ſuch alienation, &c.

Paſch.3 E.3.Coram Rege. Suſſex in Theſaur.
21 E.3.47.
34 E.3.Double p'ea.24.
41.Aſſ.p.6.43.Aſſ.p.20.
30 E.3.29 E.3.
26 E.3.Per quæ ſervitia 21.
8 H.4.1.b 12 H.4.
20 H.6.7.35 H.6.
9 E.4.33.13 H 7 14.2.
1 H.7.31.
4 E.6.Attornment, &c. 30.

If a man plead a feoffment of a Mannor, he need not plead an Attornment of the Tenants; but (if it be material) it muſt be denied or pleaded of the other ſide.

And upon conſideration had of all the books touching this point, whether the ſervices of the Freeholders do paſs, wherein there have been three ſeveral opinions, viz. ſome have holden that the ſervices do paſs in the right by the Livery as parcel of the Mannor: but not to avow without Attornment, as in the caſe of the Fine. And others have holden, that they both paſs in right and in poſſeſſion to diſtrain without Attornment. And the third opinion is, that in this caſe the ſaid ſervices paſs neither in poſſeſſion, nor in right; but until attornment

remain

remain continually in the Alienor, as Littleton here holdeth. And so it was resolved Pasch. 15 El. between Brasbitch and Barwell, according to the opinion of our Author. And I never yet knew any of Littletons cases (albeit I have known many of them) to be brought in question, but in the end the Judges concurred with our Author.

Vid. Hil. 14 El. Roc. 508. in Communi banco.

And where our Author speaketh of the Attornment of the Freeholders, if the Lord make a lease for years, or for life of a Mannor, and the Freeholders attorn to the Lessee, if after the reversion of the Mannor be named, the Attornment of the lessee for years or life shall bind the Freeholders; for by their former Attornment they have put the Attornment into the mouth of the Lessee.

9 E. 2. tit. Attornment. 18. 19 E. 2. ibid. 19. 21 E. 2. 47. 5 H. 5. 12. b. Vid. Lit. Sect. 549. & 551

¶ *Forspriſe tenant a volunt, &c.* Here is implied tenant at will, or by copy of Court Roll, according to the custom of the Mannor, so as the Freehold and inheritance both of lands in the hands of tenant at will by the Common law, or by custom, shall pass both in right and in possession without any Attornment.

Sect. 554.

¶ ITem, ſi ſoient ſeiſ̃ & tenant, & le tenant leſſa la terre a un auter pur terme de vie, ou dona la terre en le taile ſavant le reverſion a luy, &c. ſi le Seignior en tiel cas grant a ſon Seigniory a un auter, il covient que celuy en le reverſion attorna al grauntée, & nemy le tenant a terme de vie, ou le tenant en le taile, pur ceo, que en ceſt cas celuy en le reverſion eſt tenant al Seignior, & nemy le Tenant a terme de vie, ne le tenant en le taile.

ALſo, if there be Lord and tenant and the Tenant letteth the land to another for term of life, or giveth the land in taile, laving the Reverſion to himſelf, &c. if the Lord in ſuch caſe grant his Seigniory to another, it behoveth that he in the reverſion attorn to the Grantee, and not the tenant for term of life, or the Tenant in tail, becauſe that in this caſe he in the Reverſion is Tenant to the Lord, and not the tenant for term of life, nor the tenant in tail.

¶ FOr it is a maxim in Law, that no man ſhall attorn to any Grant of any Seigniory, Rent-ſervice, Reverſion, or Remainder, but he that is immediately privy to the Grantor; and becauſe in this caſe there is no privity between the Lord and the tenant for life, or Donee in tail, but only between the Lord and him in the reverſion, for in this caſe the Attornment of him in the reverſion only is good.

¶ *Savant le reverſion a luy, &c.* That is to ſay, without limitation of any Remainder over, and this is but to make his opinion plain, as to the point that he putteth it.

Sect. 555.

¶ EN meſme le maner eſt, lou ſont Seignior, meſne & tenant, ſi le Seignior voile granter les ſervices del meſne, coment que il ne fait aſcun mention en ſon grant del meſne, uncore il covient que le meſne atturna, &c. et nemy le tenant

¶ IN the ſame manner it is where there are Lord, Meſne and Tenant, if the Lord will grant the ſervices of the Meſne, albeit he maketh no mention in his grant of the Meſne, yet the Meſne ought to attorne, &c. and not the Tenant peravaile, &c. per-

peravaile, &c. pur ceo q̄ le meſne eſt tenant a luy, &c.

for that the Meſne is Tenant unto him, &c.

This ſtandeth upon the ſame reaſon that the next precedent caſe did.

Sect. 556.

HEre is to be obſerved a diverſity between a Rent ſervice and a Rent charge, or a Rent ſecke; for as to the Rent ſervice, no man (as hath been ſaid) can attorn, but he that is privy, ſo in caſe of a Rent charge it behoveth that the Tenant of the Freehold doth attorn to the Grantee, without reſpect of any privity. And therefore the diſſeiſor only in the caſe of a grant of a Rent charge, ſhall attorn, becauſe he is (as Littleton ſaith) tenant of the Freehold; but in caſe of a grant of a Rent ſervice the Attornment of the diſſeiſee ſufficeth.

21 H.6.9.b.

If there be Lord and Tenant by homage, fealty, and rent, the tenant is diſſeiſed: the Lord granteth the rent to another, the Diſſeiſee attorneth, this is void: but if he had granted over his whole Seigniory, the Attornment had been good; and the reaſon of this diverſity is here given by our Author, for that when the rent was granted only, it paſſed as a rent ſeck, and conſequently the Diſſeiſor being ter-tenant, muſt attorn. But when the Seigniory is granted, then the Diſſeiſee in reſpect of the privity may attorn.

MEs auterint eſt, lou certaine terre eſt charge dun rent charge, ou Rent ſeck, car en tiel caſe ſi celuy que ad le rent charge ceo grant a un auter, il covient q̄ le tenant del franktenement atturna al Grantee, pur ceo que le franktenement eſt charge ove le rent, &c. & en rent charge nul avowrie doit eſtre fait ſur aſcun perſon pur le diſtreſſe priſe, &c. mes il avowera le priſe bone & droiturel, come en terres ou tenements iſſint charges a ſon diſtreſſe, &c.

But otherwiſe it is wherein certain land is charged with a Rent-charge or Rent ſecke, for in ſuch caſe if he which hath the rent charge grant this to another, It behoveth that the Tenant of the freehold attorn to the Grantee, for that the Freehold is charged with the rent, &c. And in a Rent-charge no Avowry ought to be made upon any perſon for the diſtreſs taken, &c. but he ſhall avow the priſel to be good and rightful, as in lands or tenements ſo charged with his diſtreſs, &c.

Covient que le Tenant del Franktenement, &c. And therefore if the Tenant of the land charged with a rent charge, or a rent ſeck, make a leaſe for life, and he that hath the rent charge or rent ſeck granteth it over, the tenant for life ſhall attorn; for he is Tenant of the Freehold, according to the expreſs ſaying of our Author, and (as hath been ſaid) there needeth no privity.

And it was holden by Dyer Chief Juſtice of the Court of Common Pleas, and Mounſon Juſtice, in the argument of Bracebriges caſe abovеſaid, and not denied, that if he that hath a rent charge granteth it over for life, and the Tenant of the land attorn thereunto, and after he granteth the reverſion of the rent charge, that the Grantee for life may attorn alone. And that theſe words of Littleton are to be underſtood when a rent charge or rent ſecke is granted in poſſeſſion: And therewith agreeth 46 *H.* 3. where it appeareth, That the Quid juris clamat, in that caſe, did lie againſt the grantee for life.

46 E.3.27. 2 H.6 9. Vi. Lit. Sect. 549, & 553.

A man maketh a leaſe for life, and after grants to A. a rent charge out of the reverſion, A. granteth the rent over, he in the reverſion muſt attorn, and not the tenant of the freehold; for that the Freehold is not charged with the rent, for a releaſe made to him by the Grantee doth not extinguiſh the rent. And Littleton is to be underſtood, that the tenant of the Free-

hold

hold muſt attorn when the Freehold is charged.

¶ *Et en Rent charge nul Avowrie doit eſſe fait ſur aſcun perſon, &c.* This is the reaſon that Littleton giveth of the difference between the Rent-ſervice and the Rent charge. Now it may be ſaid, That this reaſon is taken away by the Statute of 21 H.8. for by that Statute the Lord needs not avow for any rent or ſervice upon any perſon in certain, and then by Littletons reaſon there needeth no privity to the attornment of a ſeigniory, for ſay they, Ceſſante cauſa vel ratione legis, ceſſat lex. As at the Common Law no aid was grantable of a ſtranger to an avowry, becauſe the avowry was made of a certain perſon, but now the Avowry being made by the ſaid Act of 21 H.8 upon no perſon, therefore the reaſon of the Law being changed, the Law it ſelf is alſo changed, and conſequently in an Avowry, according to that Act, aid ſhall be granted of any man, & the like in many other caſes, which caſe is granted to be good Law: but albeit the Lord (as hath been ſaid) may take benefit of the Statute, yet may he avow ſtill at his election upon the perſon of his Tenant. Alſo albeit the manner of the Avowry be altered, yet the privity (which is the true cauſe of the ſaid difference) remaineth ſtill as to an Attornment. 21 H.8.cap.19. Vid.Sect.454. 27 H.8.4.b.

¶ *Rent charge, &c.* It is to be obſerved, to what kind of inheritances being granted, an Attornment is requiſite. And in this chapter Littleton ſpeaketh of five: Firſt of a Seigniory, Rent ſervice, &c. Secondly, of a Rent charge. Thirdly, of a Rent ſeek. And hereafter in this Chapter of two more, viz. of a reverſion and remainder of Lands, for the tenant ſhall never need to attorn but where there is a Tenure attendance, remainder, or payment of a rent out of land. And therefore if an Annuity, Common of paſture, common of Eſtovers, or the like, may be granted for life or years, &c. the reverſion may be granted without any attornment, and albeit ſometimes in ſome of theſe caſes or the like, an Attornment be pleaded, yet it is ſurpluſage, and more than needeth, becauſe in none of them there is any Tenure, Attendance, remainder, or payment out of Land. 21 H.7.1. 1 H.5.1.17. Aſſ.14.36. Aſſ.pl.3. 31 H.8.tit. Attornment. Br.39.

Sect. 557.

¶ ITem, ſi ſoit Seignior et tenant, et le tenant leſſa ſon tenement a un auter pur terme de vie, l'remainder a un auter en fee, et puis le Seignior granta les ſervices a un auter, &c. & le tenant a terme de vie attorna, ceo eſt aſſets bone, pur ceo que le Tenant a terme de vie eſt Tenant en ceſt caſe al Seignior, &c. et celuy en le remainder ne poit eſtre dit tenñt al ſeignior, quant a cel entent forſque aps la mort le tenant a terme de vie, uncore en ceſt caſe ſi celuy en le remainder mourſt ſans hee, le ſeignior avera le remainder p voy deſcheate, pur ceo que comt que le ſeignior en tiel cas cobient davower ſur le tenant a terme de vie, &c. uncore tout lentier tenement quant a touts les eſtates de franktenement, ou h fee ſimpl', ou auterment, &c. en tiel cas ſont enſemble tenus h le ſeignior, &c.

ALſo, if there be Lord and Tenant, and the tenant letteth his tenement to another for term of life, the remainder to another in fee, and after the Lord grant the ſervices to another, &c. and the Tenant for life attorn, this is good enough, for that the Tenant for life is Tenant in this caſe to the Lord, &c. and he in the remainder cannot be ſaid to be Tenant to the Lord, as to this intent, until after the death of the tenant for life, yet in this caſe if he in the remainder dieth without heir, the Lord ſhall have the remainder by way of Eſcheat, becauſe that albeit the Lord in ſuch caſe ought to avow upon the Tenant for life, &c. yet the whole entire Tenement, as to all the eſtates of the Freehold or of Fee ſimple, or otherwiſe, &c. in ſuch caſe are together holden of the Lord, &c.

¶ Yet

¶ * Mes nemy de faire Avowrie ſur eux touts enſemble M. 3 H. 6.

¶ * But not to make Avowry upon them altogether. *M.* 3. *H.* 6.

15 E. 3. Attorn. 10. 12 E. 4. 4. 18 H. 6. 1. 9 E. 2. tit. Attorn. 18. 18 E. 4. 7. Temps E. 1. Attorn. 22. Vid. Sect. 580.

¶ *ET le Tenant a terme de vie attorne, &c.* For he that is (as hath been ſaid) privy and immediately Tenant to the Lord muſt attorn: and that is in this caſe. The tenant for life; and ſo of the other ſide, if a Seigniory be granted to one for life, the remainder to another in fee, the Attornment to the tenant for life is an Attornment to the remainder alſo; unleſs it be that they in the remainder ought to have acquital, or other privilege, (whereof they ſhould be prejudiced) and then albeit an Attornment be had to the Tenant for life, and he acknowledge the acquital, &c. yet after his deceaſe he in remainder ſhall not diſtrain until he acknowledge the acquital, notwithſtanding the Attornment of the Tenant for life.

2 H. 6. 1. Old Tenures 107. (a) 15 E. 4. 13. a.

¶ *Avera le remainder per voy deſcheat.* For the remainder is holden of the Lord, but not immediately holden; and in this caſe, by the eſcheat of the remainder, the Seigniory is extinct; for the fee-ſimple of the ſeigniory being extinct, there cannot remain a particular eſtate for life thereof, in reſpect of the Tenure and attendance over; and of this opinion is Littleton (a) himſelf in our Books. But otherwiſe it is of a rent charge in fee; for if that be granted for life, & after he in the reverſion purchaſe the land, ſo as the reverſion of the Rent charge, is extinct, yet the Grantee for life ſhall enjoy the rent during his life, for there is no Tenure or attendance in this caſe.

M 3 H. 6. 1.

¶ * *Mes nemy de faire Avowrie, &c.* This is added to Littleton, but it is conſonant to Law, and the authority truly cited.

Sect. 558.

¶ ITem, ſi ſoit Seignior & tenant, et le tenant leſſa les tenements a un feme pur terme de vie, le remainder ouſter en fee, et la feme prent baron, et puis le ſeignior granta les ſervices, etc. a le baron et ſes heires, en ceſt caſe le ſervice eſt mis in ſuſpence durant le coverture. Mes ſi la feme devie vivant le Baron, le Baron et ſes heires averont le rent de eux en le remainder, etc. et en ceſt caſe il ne beſoigne aſcun attornment per parol, etc. pur ceo que le baron que doit attorn̄ accepta le fait del graunt de les ſervices, etc. le quel acceptance eſt un attornment en la ley.

ALſo, if there be Lord and Tenant, and the Tenant letteth the tenements to a woman for life, the remainder over in fee, and the woman taketh husband, and after the Lord grant the ſervices, &c. to the husband and his heirs, in this caſe the ſervice is put in ſuſpence during the Coverture: but if the wife die living the husband, the husband and his heirs ſhall have the rent of them in the remainder, &c. And in this caſe there needeth no Attornment by parol, &c. for that the husband which ought to attorn, accepted the deed of grant of the ſervices, &c. the which acceptance is an attornment in Law.

3 E. 3. 42. 15 E. 3. Attornment, 11.

¶ *LE quel acceptance eſt un attornment en la Ley, &c.* Littleton having ſpoken (as hath been ſaid) of Attornments in Deed or expreſs, now cometh to ſpeak of Attornments in Law, or implied; and having before ſet down five expreſs Attornments in Deed, doth in this Chapter enumerate ſeven Attornments in Law. Here it is to be underſtood, That the expreſs Attornment of the husband will bind the wife after the cover-

coverture; and inasmuch as this acceptance of the grant is an Attornment in law, without a word of Attornment the Seigniory shall pass. And this is the first example that Littleton putteth of an Attornment in Law, which amounteth to an express Attornment, for that it is an agreement to the grant. 48 E. 4 tit. Fines 37. 12 E. 4. 4.

If the Lord grant his Seigniory to the Tenant of the Land, and to a stranger, and the Tenant accept the Deed; this acceptance is a good Attornment to extinguish the one moiety, and to vest the other moiety in the Grantee, as hath been said.

Sect. 559.

¶ En mesme le manner est, si soyent Seignior, & tenant, & le tenant prent feme, & puis le Seignior granta les services a la feme et ses heirs, & le baron accepta le fait, en cest cas apres la mort le baron, la feme & ses hées averont les services, &c. car per le acceptance del fait per l' baron, cea est bone attornement, &c. coment que durant la coverture les services sont mis en suspence, &c.

¶ IN the same manner is it, if there be Lord and tenant, and the tenant taketh Wife, and after the Lord grant his services to the wife and his heirs, and the husband accepteth the deed. In this case after the death of the husband, the wife and her heirs shall have the services, &c. for by the acceptance of the deed by the husband, this is a good Attornment, &c. albeit during the coverture the services shall be put in suspence, &c.

¶ HEre is the second example, that Littleton putteth of an Attornment in Law; and standeth upon the former reason.

¶ *Sont mise en suspence.* Suspence cometh of suspendeo, and in Legal understanding is taken, when a Seigniory, Rent, Profit apprender, &c. by reason of unity of possession of the Seigniory, Rent, &c. and of the land out of which they issue, are not in esse for a time, & tunc dormiunt, but may be revived or awaked. And they are said to be extinguished when they are gone for ever, & tunc moriuntur, and can never be revived; that is, when one man hath as high and perdurable an estate in the one as in the other.

Sect. 560.

¶ ITem, si soyent Seignior & tenant, et l' tenant granta les tenements a un home pur term de sa vie, le remainder a un auter en fee, si le Seignior granta les services a le tenant a terme de vie en fee, en cest cas le tenant a

ALso, if there be Lord and Tenant, and the Tenant grant the tenements to a man for term of his life, the remainder to another in fee, if the Lord grant the services to the Tenant for life in fee; in this case the tenant for term of life

¶ HEre is the third case that Littleton putteth of an Attornment in Law. And it is to be observed, that albeit a grant, as hath been said, may enure by way of release, and a release to the tenant for life doth work an absolute extinguishment, whereof he in the remainder shall take benefit, yet the Law shall never make any construction against the purport of the grant to the prejudice of any, or against the meaning of the parties as here

here it should; for if by construction it should enure to a release, the heirs of the Tenant for life should be disherited of the rent, and therefore Littleton here saith, that the heirs of the grantee shall have the seigniory after his death. And here is an Attornement in Law to a grant suspended, that cannot take effect in the Grantee so long as he liveth, but shall take effect in his heirs by descent; for the Inheritance of the Seigniory was in the Tenant for life, and the suspension only during his life.

terme de vie ad Fee en les services. Mes les services sont mis en suspence durant sa vie. Mes les heires le tenant a terme de vie averont les services apres son decease, &c. Et en cest cas il ne besoigne attornement, car per lacceptance del fait de celuy, que doit attourner, &c. est ceo attournement de luy mesme.

hath a Fee in the services; but the services are put in suspence during his life. But the Heirs of the Tenant for life shall have the services after his decease, &c. And in this case there needeth no Attornment: for by the acceptance of the Deed by him which ought to attorn, &c. this is an Attornment of it self.

Sect. 561.

¶ Mes lou le tenant ad ey grand & haut estate en les tenements, sicome le Seignior ad en le Seigniory, en tiel case, si le Seignior graunta les services al tenant in fee, ceo urera per voy dextinguishment, Causa patet.

But where the tenant hath as great and as high estate in the tenements, as the Lord hath in the Seigniory; in such case if the Lord grant the services to the Tenant in fee, this shall enure by way of extinguishment, *Causa patet.*

¶ Here Littleton intendeth not only as great and high an Estate, but as perdurable also, as hath been said; for a Disseisor or Tenant in fee upon Condition hath as high and great an Estate, but not so perdurable an Estate, as shall make an extinguishment.

Sect. 562.

¶ Here in this case he in the Reversion of the tenancie must attorn, because he is the Tenant to the Lord, and yet the Seigniory shall be suspended during the life of the Grantee, because he hath an estate for life in the Tenancie, but his heies shall enjoy the Seigniory by Descent.

¶ Item, si soyent Seignior et Tenant, & l' tenant fait un leas a un home pur terme de sa vie, savant l' reversion a luy, si le Seignior granta l' Seigniorie a le tenant a terme de vie en fee, en cest case il covi-

¶ *Uncore il ne*

Also, If there be Lord and tenant, and the tenant maketh a Lease to a man for term of his life, saving the reversion to himself, if the Lord grant the seigniory to tenant for life in fee; in this case it behoveth that he in the rever-

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ent que celuy en le reverſion attorna al tenant a terme de vie per force de cel grant, ou autrement l'grant eſt void, pur ceo que celuy en le reverſion eſt tenant al Sſir, &c.

¶ * Et uncore ſi ne tiendra del tenant a terme de vie, durant ſa vie. Cauſa patet. * ¶

ſion muſt attorn to the the tenant for life by force of this grant, or otherwiſe the grant is void; for that he in the reverſion is Tenant to the Lord, &c.

* ¶ Yet he ſhall not hold of the Tenant for life during his life. *Cauſa patet.* &c.

tient, &c. This is added, and not in the original, and is againſt Law, and therefore to be rejected.

¶ *Tenant al Seignior, &c.* Here is to be underſtood a diverſity when the whole eſtate in the Seigniory is ſuſpended, and when but part of the eſtate in the Seigniory is ſuſpended. And in this caſe the Seigniory is ſuſpended but for term of life, (a) and therefore as to all things concerning the right it hath his being; but as to the poſſeſſion during the particular eſtate the Grantee ſhall take no benefit of it, therefore during that time he ſhall have no Rent, Service, Wardſhip, Relief, Herriot, or the like, becauſe theſe belong to the poſſeſſion; but if the Tenant dieth without heir, the tenancie ſhall eſcheat unto the Grantee, for that is in the right, and yet when the Seigniory is revived by the death of the Tenant, there ſhall be wardſhip; as if the Tenant marry with the Seigniorels and dieth, his heir within age, the wife ſhall have the wardſhip in the heir. Alſo in the caſe that Littleton here putteth albeit the Seigniory be ſuſpended but for life, yet ſome hold that he cannot grant it over, becauſe the Grantee took it ſuſpended, and it was never in eſſe in him; but if the Tenant make a Leaſe for years or for life to the Lord, there the Lord may grant it over; becauſe the Seigniory was in eſſe in him, and the fee-ſimple of the Seigniory is not ſuſpended; but if the Lord diſſeiſe the tenant, or the Tenant enfeoffe the Lord upon condition, there the whole eſtate in the Seigniory is ſuſpended; and therefore he cannot during the ſuſpenſion take benefit of any Eſcheat, or grant over his Seigniory.

(a) 34 Aſſ. p. 15.

16 E. 3. tit. Voucher 88.

5 E. 3. Twougs caſe.

Sect. 563.

¶ ITem, ſi ſoient ſeignior & tenant, & le tenant tient del Seignior per xx. maners des ſervices, & le Seignior granta ſon ſeigniory a un auter, ſi le tenant paya en fait aſcun parcel daſcun de les ſervices al grauntee, ceo eſt bone attornment, de et pur touts les ſervices, comẽt que lentent de le teſt fuit dattourner forſque de cel parcel pur ceo que le Seigniory eſt entier, coment que ils ſont di-

ALſo, if there be Lord and Tenant, and the Tenant holdeth of the Lord by xx manner of ſervices, and the Lord grant his Seigniory to another, if the Tenant pay in Deed any parcel of any of the ſervices to the Grantee; this is a good Attornment, of and for all the ſervices albeit the intent of the tenant was to attorn but for this parcel, for that the Seigniory is intire, although there be divers man-

¶ HEre it appeareth that an Attornment being made for parcel, is good for the whole; for ſeeing he hath attorned for part, it cannot be void for that, and good it cannot be unleſs it be for the whole; but of this ſufficient hath been ſaid before in this Chapter.

4 E. 1. 55. Malmans caſe. 29 E. 3. 23. 5 E. 4. 2. 22. Aſſ. 60. 17 H. 4. 10. 55 H. 6. 8. Per. Fr. ſote.

¶ *Paya aſcun parcel des ſervices.* Here is the fourth example of an Attornment in Law, for payment of any parcel of the ſervices is an agreement in Law to the grant.

40 E. 3. 34.

¶ *Coment que lentent del tenant fuit dattorner. &c.*

Quia intentio inſervire debet legibus, non leges intentioni. And yet as far as it may ſtand with the rule of Law, it is honourable for all Judges to judge according to the intention of the parties, and ſo they ought to do. And of this ſomewhat in this Chapter hath been ſaid before.

20 H.6.

Sect. 564.

¶ HEre is to be obſerved, that this judgment in the Scire facias (which is no more but that the Demandant ſhall have execution, &c.) is a good Attornment, albeit it is preſumed that Iudicium redditur in invitum, and that an Attornment in Law of any part is good for the whole. And this is the fifth example that Littleton putteth of an Attornment in Law.

48 E.3.24. 3 E.3. Quid juris clamat. 4 E.3.28,29. 37 H.6.14. per Moyle. 27 E.3.29.

Note, that in caſe of a Deed nothing paſſeth before Attornment, as hath been ſaid; In the caſe of the Fine, the thing granted paſſeth as to the ſtate, but not to diſtrain, &c. without attornment. In the caſe of the King the thing granted doth paſs both in eſtate and privity to diſtrain, &c. without attornment, unleſs it be of lands or tenements that are parcel of the Dutchy of Lancaſter, and lie out of the County Palatine.

¶ ITem, ſi ſoit ſeignior et tenant, et le tenant tient del ſeir per pluſors maners des ſervices, et l'ſeir granta les ſervices a un auter per fine, ſi le grantee ſua un Scire facias hors del meſme l'fine pur aſcun parcel de les ſervices, et ad judgement de recover, cel judgement eſt done attornement en ley, pur touts les ſervices.

ALſo, if there be Lord and tenant, and the Tenant holdeth of the Lord by many kind of ſervices, and the Lord grant the ſervices to another by fine, if the grantee ſue a *Scire facias* out of the ſame fine for any parcel of the ſervices, and hath judgment to recover, that judgment is a good attornment in law for all the ſervices.

Sect. 565.

¶ ITem, ſi le Seignior dun rent ſervice granta les ſervices a un auter, et le tenant attorna per un denier, et puis le grantee diſtraine pur le rent arere, et le tenant a luy fait reſcous, en ceo cas le grantee navera aſſiſe del rent, forſque briefe de reſcous, per ceo que le doñ del denier pur le tenant, ne fuit forſque per voy dattornement, &c. Mes ſi le tenant avoit done a le grantee le dit denier, come parcel de le rent, ou un maile, ou un farthing per voy de

ALſo, if the Lord of a Rent ſervice grant the ſervices to another, and the Tenant Attorn by a penny, and after the Grantee diſtrain for the Rent behinde, and the Tenant make reſcous; In this caſe the Grantee ſhall not have an Aſſiſe for the Rent, but a Writ of Reſcous, becauſe the giving of the penny by the Tenant was not but by way of Attornment, &c. but if the Tenant had given to the Grantee the ſaid penny as parcel of the Rent, or half a penny, or a farthing by way of ſeiſin of the Rent, then this

ſeiſin

ſeiſin del rent, donques ceo eſt bone attornment, et auxy eſt bone ſeiſin al grauntee del rent, et donqz ſur tiel reſcous le grantee avera aſſiſe, &c.

is a good attornment, and alſo it is a good ſeiſin to the Grantee of the rent, and then upon ſuch reſcous the Grantee ſhall have an aſſiſe. &c.

HEreupon is to be obſerved a diverſity between money given by way of Attornment, and where it is given as parcel of the rent by way of ſeiſin of the Rent. For albeit the rent be not due before the day, yet a payment of parcel of the rent before-hand is an actual ſeiſin of the rent to have an Aſſiſe. And ſo it is if he give an ox, a horſe, a ſheep, a knife, or any other valuable thing in name of ſeiſin of the rent before-hand, this is good. And therefore a payment in name of ſeiſin is more beneficial for the Grantee, becauſe that is both an actual ſeiſin and attornment in Law, and yet being given before the day in which the rent is due, ſhall not be abated out of the rent. So, as to give ſeiſin of the rent, it is taken for part of the rent; but as to the payment of the rent, it is accounted as no part of the rent; and the reaſon of the diverſity is, for that remedies to come to rights or duties are ever taken favourably. Here alſo appeareth that there is an actual ſeiſin, as a ſeiſin in deed of a Rent, wherefor (as Littleton here ſpeaketh) an Aſſiſe doth lie, and a ſeiſin in Law which the Grantee hath by Attornment before actual poſſeſſion.

39 H.6.26. 5 E.4.2. Vide Sect. 235. 25 E.3.44.49 E.3.15. 37 H.6.39.49. Aſſ.p.6. 34 H.6.42. 15 E.3. Execution 63. 42 E.3.21.28 H.6.6.b. 7 H.4.2. tit. Attorney Br.97.

Sect. 566.

ITem, ſi ſont pluſors Joyntenants que teignont per certaine ſerdices, et le Seignior graunta a un auter les ſervices, et un de les Joyntenants attorna al grauntee, ceo eſt auxy bone, ſicome touts uſſent attorne, pur ceo que le Seigniory eſt entire, &c.

ALſo, if there be many Joyntenants which hold by certain ſervices, and the Lord grant to another the ſervices, and one of the Joyntenants attorn to the Grantee, this is as good as if all had attorned, for that the Seigniory is entire, &c.

HEre is to be obſerved what manner of Tenants ſhall attorn to the Grant. And firſt, (b) if there be two or more Joyntenants, and one of them attorn, it is ſufficient: for, as it hath been often ſaid, there cannot be an attornment in part. And albeit there is great Authority againſt Littleton, yet the Law hath been adjudged according to Littleton's opinion, as it hath been in other of his caſes when they have come in queſtion; and as it is of an attornment, ſo it is of a ſeiſin; a ſeiſin of a rent by the hands of one Joyntenant is good for all, and a ſeiſin of part of the rent is a good ſeiſin of the whole.

(b) 39 H.6.3.26. See Tookers caſe ubi ſupra, and the Authorities there cited.

(c) If either the Grantor or the Grantee die, the Attornment is countermanded; but if the Tenant die, he that hath his eſtate may attorn at any time. If the Tenant grant over his eſtate, his aſſignee may attorn.

(c) Vid 1.3 fo.7.11.8. fol.37.88.9.fol.38. Vid 4 H.6.29. 18 E.4.16

(d) If an Infant hath land by purchaſe, or by deſcent, he ſhall be compelled to attorn in a per quæ ſervitia, and no miſchief to the Infant; for when he cometh to full age he may diſclaim to hold of him, or he may ſay that he holds by leſſer ſervices; but there ſhould be a greater miſchief for the Lord, if the Attornment of an Infant ſhould not be good, for he ſhould loſe his ſervices in the mean time.

If an Infant be a Leſſee, he ſhall be compelled to attorn in a Quid juris clamat. The Attornment of an Infant to a grant by deed is good, and ſhall binde him, becauſe it is a lawful act, albeit he be not upon that grant by Deed compellable to attorn. Of Baron and Feme Littleton putteth many caſes in this Chapter.

(d) 42 E.3. Age 31. 26 E.3.62.37 H.8. tit. Attorn. Br. 26 E.3.62. 26 Aſſ.27.32 E.1. tit. per quæ ſervic.9. 2 E.2. Attorn 71. 2 E.3.ib.77. 8 H.6.1. Lib.9.fo.84,85. Coney's caſe 4. Mar. Dier 137. 21 E.3. Age 85. 7 E.1. Age 140.

(e) A man that is deaf and dumb, and yet hath underſtanding may attorn by ſigns: (f) but one that is not Compos mentis cannot attorn; for that he that hath no underſtanding cannot agree to the Grant.

(e) 16 E.3.63. (f) 13 E.3.53.

What conveyances ſhall be good without Attornments, more ſhall be ſaid in this Chapter, in his proper place.

Sect. 567.

¶ ITem, ſi home leſſa tenemts a terme dans, per force de quel leaſe le Leſſee eſt ſeiſie, et puis le Leſſor per ſon fait grant a le reverſion a auter pur term de vie, ou en taile, ou en fee, il covient en tiel caſe que le tenant a terme dans attorna, ou autrement rien paſſera a tiel grantee per tiel fait. Et ſi en ceſt caſe le tenant a terme dans ſerroit al Grantee, donques maintenant paſſera le Franktenement al Grauntee per tiel attornement ſauns aſcun liverie de ſeiſin, &c. pur ceo que ſi aſcun livery de ſeiſin, &c. ſerra ou beſoigne deſtre fait, en cel caſe donques le tenant a terme dans ſerroit al temps de liverie de ſeiſin ouſte de ſon poſſeſſion, le quel ſerroit encounter reaſon, &c.

ALſo, if a man letteth tenements for term of years, by force of which Leaſe the Leſſee is ſeiſed, and after the Leſſor by his Deed grant the reverſion to another for term of life, or in tail, or in Fee; it behoveth in ſuch caſe that the Tenant for years attorn, or otherwiſe nothing ſhall paſs to ſuch grantee by ſuch deed, And if in this caſe the Tenant for years attorn to the Grantee, then the Freehold ſhall preſently paſs to the Grantee by ſuch attornment without any livery of ſeiſin, *&c.* becauſe if any livery of ſeiſin, *&c.* ſhould be or were needful to be made, then the Tenant for years ſhould be at the time of the Livery of ſeiſin ouſted of his poſſeſſion, which ſhould be againſt reaſon, *&c.*

¶ HEre Littleton having ſpoken of Grants of Seigniories and Rent-charges, and Rent ſecke iſſuing out of land, here treateth of a Grant of a reverſion of land upon an eſtate for years; ſeeing this grant of the Reverſion muſt be by Deed, and the agreement of the Leſſee for years requiſite thereunto, the Freehold and inheritance do paſs thereby, as well as by livery of ſeiſin, if it were in poſſeſſion; and the grant of the reverſion by Deed with the Attornment of the Leſſee, do countervail in Law a Feoffment by Livery, as to the paſſing of the Freehold and Inheritance.

(g) 6 E. 3. 32. 25 E. 3. 53. Brook tit. Attorn. 48. 32 E. 3. Scire fac. 101. Dy. 1. a.

¶ *A terme dans.* (g) And yet a tenant by ſtatute Merchant, or tenant by Statute Staple, or by Elegit, muſt alſo attorn; for the Grantee may have a Venire facias ad computandum, or tender the money, &c. and diſcharge the land; and if the reverſion be granted by fine, they ſhall be compelled to attorn in a Quid juris clamat.

And ſo the Executors that have the Land until the debts be paid muſt attorn upon the grant of the Reverſion, although they have not any certain term for years.

Sect. 568.

¶ HEre Littleton ſpeaketh of a Reverſion expectant upon an eſtate for life, or gift in tail.

¶ *Il covient que le Tenant de la Terre at-*

¶ ITem, ſi Tenements ſoient leſſes a un home pur terme de vie, ou done en le taile ſavant

ALſo, if Tenements be letten to a man for term of life, or given in tail, ſaving the reverſion, *&c.* if he in

le

le reversion, &c. si celuy en le reversion en tiel case granta le reversion a un auter per son fait, il covient que le tenant de la Terre attorna al grantée en la vie le grantor, ou autrement, le graunt est void.

the reversion in such case grant the reversion to another by his Deed, it behoveth that the tenant of the Lord attorn to the grantee in the life of the Grantor, or otherwise the Grant is void.

torne al Grantee, &c. Let us therefore speak first of Tenant for life: and yet in some case albeit Tenant for life hath granted over his Estate, yet he shall attorn; (a) as if Tenant in Dower, or by the Courtesie, grant over his or her estate, and the heir grant over the reversion, the Tenant in Dower, or by the Courtesie may attorn, because at the time of the grant made they were attendant to the heir in reversion, and the Grantée cannot be Tenant in Dower, or Tenant by the Courtesie. And if the Reversion be granted by Fine, the Fine must suppose that the tenant in Dower, or by the Courtesie, did hold the land, albeit they had formerly granted over their estate; and albeit the reversion doth pass by the Fine, yet the Quid juris clamat must be brought against him that was tenant at the time of the note levied. But yet after the reversion is granted over, the Grantée shall not have any Action of waste against the Tenant in Dower, or by the Courtesie; but the action of waste must be brought against their assignée, and not against themselves; for Tenant by the Courtesie or Tenant in Dower cannot hold of any, but of the heir: and therefore in respect of the privity, they shall attorn and be subject to an action of waste, as long as the reversion remaineth in the heir, albeit they have granted over their whole estate. And it is worthy of the observation, that if the grantée of the reversion doth bring an action of waste against the assignée of the tenant by the Courtesie, (b) the Pl. must rehearse the statute which proveth that no prohibition of waste lay at the common law, as it did if the heir had brought it against the tenant by the courtesie himself: and therefore some do hold, that if the heir do grant over the reversion, that the attornment of the Assignee of the Tenant by the courtesie, or of tenant in Dower, is sufficient, because they afterward must be attendant, and subject to the Action of waste.

(a) 10 H.4.tit. Attorn. 10.11 H.4 18.30 E.3. 16.38 E.3 23.18 E.3 3. 10 E.3. Quid juris clam.41.42 E.3. 18. Temps E.1.tit.Waste 123.

F.N.B.55.E.Regist. f. 72.4 E.3.26.

(b) Regist.72.

If the reversion of Lesse for life be granted, and Lesse for life assign over his estate, the Lesse cannot attorn; but the attornment of the Assignee is good, because (as Littleton here saith) it behoveth that the Tenant of the Land do attorn, and after the assignment there is no tenure or attendance, &c. between the Lesse and him in reversion.

18 E.4.10.b.26 E.3.62.

If Lesse for life assigneth over his estate upon condition, he having nothing in him but a Condition, shall not attorn, but the Assignee may attorn, because he is Tenant of the land.

5 E.3.10.

Sect.569.

¶ EN mesme l'manner est, si terre soit done en taile, ou lessa a un hõe p̄ terme de vie, le remainder a un auť en fee, si celuy en l' remainder voile granter cest remaind̄ a un auter, &c. si le tenant de la terr̄ attorna en la vie le grantor, donques l' grant de tiel rem̄ est bone, ou autrement nemy.

IN the same manner is it, if land be granted in tail, or let to a man for term of life, the remainder to another in fee, if he in the remainder will grant this remainder to another, &c. if the tenant of the land attorn in the life of the Grantor; then the grant of such a remainder is good, or otherwise not.

¶ Littleton also speaketh here of an Attornment by Tenant in taile; and true it is that he may attorn, but where the reversion is granted by fine, he is not compellable to attorn, because he hath an estate of Inheritance which may continue for ever. And so it is of a tenant in taile after possibility of Issue extinct, he shall not be compelled to attorn for the Inheritance which was once in him. (c) But if Tenant in tail after possibility of issue extinct grant over his estate, his assignee shall be compelled to attorn, because he never had but a bare state for life.

11 H.1.3.1.3 E.4.11. 43 E.3.1.46 E.3.13.

5 H.5.

20 E.3.Quid juris clam.50.

(c) See the Chap. of Tenants in tail after possibility of Issue extinct. And Ewins case there cited to be adjudged.

But

But as to Tenant in taile, note a diverſity betwéen a Quid juris clamat, and a Quem reditum reddit, or per quæ ſervitia; for against a Tenant in Tail, no Quid juris clamat lieth, as is aforeſaid. But if a man make a gift in tail, the remainder in fee, and the Seigniory or rent-charge iſſuing out of the land be granted by Fine, the Comuſe ſhall maintain a per quæ ſervitia, or a Quem redditum, and compel him to attorn; for herein his eſtate of Inheritance is no priviledge to him; for that a tenant in fee ſimple (as his eſtate was at the Common Law) is alſo compellable in theſe caſes to attorn.

Sect. 570.

¶ * P. 12 E. 4. Et la eſt tenus per tout le Court, que Tenant en Taile ne ſerra arc̃ dattorner, mes ſil atturna gratiis, ceſt aſſets bone. *

P. 12 *Edw.* 4. It is there holden by the whole Court, that Tenant in Tail ſhall not be compelled to attorn; but if he will attorn *gratis*, it is good enough.

12 E. 4. 3. 4. ¶ This is added to Littleton; and therefore though it be good Law, and the Book truly cited, yet I paſs it over.

Sect. 571.

¶ Item, ſi terre ſoit leſſa un home pur terme dans, le remainder a un auter p̃ term̃ de vie, reſervant al Leſſour un certain rent per an, et liverie de ſeiſin ſur ceo eſt fait al tenant p̃ terme dans, ſi ceſtuy en le reverſion en ceſt caſe granta le reverſion a un auter, &c. et le tenant que eſt en le remainder apres le terme dans ſoy attourna, ceo eſt bone Attornement, et celuy a que ceſt reverſion eſt graunt per force de tiel Attornement diſtreyner a le Tenant a terme dans pur le Rent due apres tiel Attornement, coment que le teſtit a terme dans ne unques attourna a luy. Et la cauſe eſt, p̃ t̃ que lou le reverſion eſt dependant ſur leſtate del franktenement, ſuffiſt que le t̃ del franktenemt attourna ſur tiel grant del Reverſiõ, &c.

ALſo, if Land be let to a man for years, the remainder to another for life, reſerving to the Leſſor a certain rent by the year, and Livery of Seiſin upon this is made to the Tenant for years, if he in the Reverſion in this caſe grant the Reverſion to another, *&c.* and the Tenant which is in the Remainder after the term of years attorn; this is a good Attornment, and he to whom this Reverſion is granted, by force of ſuch Attornment ſhall diſtrein the Tenant for years for the Rent due after ſuch Attornment, albeit the Tenant for years did never attorn unto him. And the cauſe is, for that where the Reverſion is depending upon an eſtate of Freehold, it ſufficeth that the Tenant of the Freehold do attorn upon ſuch a Grant of the Reverſion, *&c.*

¶ Suffiſt *que le Tenant del Franktenement attorna.* Note, Littleton ſaith not here, that the Tenant of the Franktenement ought not in this caſe to attorn, but that it

ſt ſufficeth that he doth attorn. And I heard Sir Iames Dyer Chief Iuſtice of the Common Pleas hold, that in this caſe if the Tenant for years did attorn, it would inure the reuerſion, for ſeeing the eſtate for years is able to ſupport the eſtate for life, he ſhall bind him in the remainder by his attornment in reſpect of his eſtate and priuity.

Paſch. 15 Eliz. in Brabritches caſe in communi Banco.

Sect. 572.

ET eſt aſcauoir, que ſou un leas a terme dans, ou a terme de vie ou done en taile eſt fait a aſcun home, reſervant a tiel leſſor, ou donor un certaine rent, &c. ſi tiel leſſor, ou donor, graunta ſon reuerſion a un auter, & le tenant del terre attourna, le rent paſſa al grauntee, coment que en le fait del grant de reuerſion nul mention ſoit fait de le rent, pur ceo que le rent eſt incident al reuerſion en tiel caſe, & nemy è converſo, &c. Car ſi home voille graunter le rent en tiel caſe a un auter, reſervant a luy le reuerſion del terre, coment que le tenant attorna a le grauntee, ceo ſerra forſque un rent ſecke, &c.

AND it is to be underſtood, that where a leaſe for years or for life, or a gift in taile is made to any man, reſerving to ſuch Leſſor or Donor a certain rent, &c. if ſuch Leſſor or Donor grant his reuerſion to another, and the tenant of the land attorn, the rent paſſeth to the Grantee, although that in the deed of the Grant of the reuerſion no mention be made of the rent, for that the rent is incident to the reuerſion in ſuch caſe, and not *è converſo*, *&c.* For if a man will grant the rent in ſuch caſe to another, reſerving to him the reuerſion of the Land, albeit the Tenant attorn to the Grantee; this ſhall be but a rent ſecke, *&c.*

Of this Littleton hath ſpoken before in the Chapter of Rents.

H.

Sect. 573.

ITem, ſi home leſſa terre a un auter p̄ term̄ de ſa vie, & puis il confirma p̄ ſon fait eſtate de l'tenant a term̄ de vie, le remainder a un auter en fee, & le tenant a terme de vie accepta le fait, donques eſt le remainder en fait en celuy a que le remainder eſt done ou limitte per meſme le fait, car per lacceptance del tenant a term̄ de vie del le fait, ceo eſt un agreement del luy, & iſſint un attornement en ley. Mes uncore celuy en le remainder navera aſcun

ALſo, if a man let land to another for his life, and after he confirm by his Deed the eſtate of the Tenant for life, the remainder to another in fee, and the Tenant for life accepteth the Deed, then is the remainder in fait in him to whom the remainder is given or limited by the ſame Deed: for by the acceptance of the Tenant for life of the deed, this is an agreement of him, and ſo an Attornement in Law. But yet he in the remainder ſhall not have any acti-

action

tion de Waſte ne auter benefit per tiel remainder, ſi non que il avoit l'dit fait en poigne, per que le remainder fuit taile ou graunt a luy. Et pur ceo que en tiel cas le tenant a term de vie voile p cas reteigner le fait a luy, & cel entent que celuy en le remainder naveroit aſcun action d waſte envers luy, pur ceo que ſi ne poit haver le fait en ſa poſſeſſion, il ſerra bone & ſure choſe en tiel cas pur celuy en le remainder, que un fait endent ſoit fait per celuy que voile fait tiel confirmation & le remainder ouſter, &c. & que celuy que fait tiel confirmation delivera un part del Indenture al tenant a terme de vie, & le auter part a celuy que avera le remainder. Et donque ſi per monſtrance de le part del endenture, poit aver action de waſte envers le tenant a terme de vie, et touts auters advantages que celuy en le remainder poit aver en tiel caſe, &c.

on of Waſte nor other benefit by ſuch remainder, unleſs that he hath the ſaid Deed in hand whereby the remainder was entailed or granted to him. And becauſe that in ſuch caſe the Tenant for life peradventure will retain the Deed to him to this intent that he in the remainder ſhould not have any action of Waſte againſt him; for that he cannot come to have the Deed in his poſſeſſion, it will be a good and ſure thing in ſuch caſe for him in the remainder, that a Deed indented be made by him which will make ſuch Confirmation and the remainder over, *&c.* and that he which maketh ſuch Confirmation deliver one part of the Indenture to the Tenant for life, and the other part to him that ſhall have the remainder. And then he by ſhewing of that part of the Indenture may have an Action of waſte againſt the Tenant for life, and all other advantages that he in the remainder may have in ſuch a caſe, &c.

HEre Littleton putteth a caſe of a remainder whereunto an Attornment is requiſite. And this is the ſixth example of an Attornment in Law.

¶ *Remainder a un auter, &c.* Of this ſufficient hath been ſaid in the Chapter of Confirmation, Sect.525.

¶ *Si non que il avoit le fait en poigne.* And albeit he hath no remedy to come to the Deed during the life of Tenant for life, yet becauſe he is privy in eſtate, he ſhall not maintain an action of waſte without ſhewing the Deed; but when the remainder is once executed, he ſhall not need to ſhew the Deed.

¶ *Il ſerra bone & ſuer choſe, &c.* Hereby it appeareth how neceſſary it is to uſe learned advice in a mans Conveyance; for thereby ſhall be prevented many queſtions, and not to follow the advice of him that is experimented only. For as in Phyſick, Nullum medicamentum eſt idem omnibus, ſo in Law one form or preſident of conveyance will not fit all caſes.

Vide Sect.325. 575.
Vid Pl.Com.in Colthirſts caſe, Doct.& Stud.cap.10.fol.93, 94.
8 R.2.in Waſte in Liver eſcrite.
17 E.3.confirmat.4.
35 H.6.fol.8, 14 H.8. Pl.Com.149. in Throckmortons caſe.45 E.3. 24.25. 21 H.4.39. 24 H.4.31.

Sect.

Sect. 574.

¶ Item, ſi deux Joyntenants ſont, les queux leſſont lour terre a un auter pur terme de vie, rendant a eux & a lour heires certaine rent per an, en ceſt caſe ſi un des Joyntenants en le reverſion releſſa a lauter Joyntenant en meſme le reverſion, ceſt releas eſt bone, et celuy a que le releas eſt fait avera ſolement le rent del tenant a terme de vie, et avera ſolement un briefe de waſte envers luy coment que il ne unques attorneroit per force de tiel releas, &c. Et la cauſe eſt pur le privity que un foits fuit perenter le tenant a terme de vie, & eux en le reverſion.

Alſo, if two Joyntenants be, who let their land to another for term of life, rendring to them and to their Heirs a certain yearly rent: In this caſe if one of the Joyntenants in the reverſion releaſe to the other Joyntenant in the ſame reverſion, this releaſe is good, and he to whom the releaſe is made ſhall have only the rent of the Tenant for life, and ſhall only have a Writ of Waſte againſt him, although he never attorned by force of ſuch releaſe, &c. And the reaſon is for the privity which once was between the Tenant for life and them in the Reverſion.

¶ *Deux joyntenants.* And to it is (as it is here to be underſtood) albeit there be three or more Joyntenants, and one of them releaſeth to one of the other.

It is true, that there is a difference between theſe releaſes; for the releaſe in the one caſe maketh no degree, but he to whom the Releaſe is made is ſuppoſed in from the firſt Feoffor; and in the other it worketh a degree, & he to whom the releaſe is made in the Per by him; yet in neither of theſe caſes there is requiſite any attornment, for both of them are within Littletons reaſon for the privity, &c.

¶ *Pur le privity, &c.* For if one joyntenant make a leaſe for years, reſerving a Rent and dieth, the Survivor ſhall not have the rent; and therefore Littleton here addeth materially, for the privity that was between the tenant for life and them in the reverſion. 2 Eliz. Dyer 176.

And here it is good to be ſeen what grantors or others that make Conveyances, &c. are ſuch as their Grants or Conveyances are either good without Attornment; or where the Tenant is no way compellable to attorn. Tenant for life ſhall not be compelled to attorn in a Quid juris clamat upon a grant of a reverſion by fine holden of the King in chief without licence; but the reaſon hereof is, not becauſe the Tenant for life might be charged with the fine; for his eſtate was more ancient than the fine levied: but becauſe the court will not ſuffer a prejudice to the King, and the King may ſeiſe the reverſion and rent, and ſo the Tenant ſhall be attendant to another. Alſo it is a general rule, that when the grant by fine is defeaſible, there the Tenant ſhall not be compelled to attorn. 45 E. 3. 66. 13 Eliz. Dyer 280. Lib. 3. fol. 86. Just. Windhams caſe. 36 H. 6. 24.

As if an Infant levie a fine, this is defeaſible by writ of Error during his minority, and therefore the Tenant ſhall not be compelled to attorn.

So if the Land be holden in ancient Demeſne, and he in the reverſion levieth a fine of the reverſion at the Common Law, the Tenant ſhall not be compellable to attorn, becauſe the eſtate that paſſed is reverſible in a writ of Deceit. 5 E. 3. 25. 31 E. 3. Ancient Demeſne 76.

So if the Tenant in tail had levied a fine, the Tenant ſhould not be compelled to attorn, becauſe it was defeaſible by the iſſue in tail. 24 E. 3. 25 b. 37 H. 6. 33. 48 E. 3. 23.

But now the Statutes of 4 H. 7. & 32 H. 8. having given a further ſtrength to fines to bar the iſſue in tail, the reaſon of the Common Law being taken away; the Tenant in this caſe ſhall be compelled to attorn, as it was adjudged * in Juſtice Windhams caſe. (*) Lib. 3. fol. 86 Juſtice Windhams caſe.

If an alienation be in Mortmain, the tenant ſhall not be compelled to attorn, becauſe the Lord Paramount may defeat it. 27 E. 3. 7. 22 E. 3. 18.

Sect.

Sect. 575.

¶ EN meſme le manner, & pur meſme la cauſe eſt, lou home leſſa terre a un auter pur terme de vie, le remainder a un auter pur terme de vie, reſervant le reverſion al leſſor, en ceſt cas ſi celuy en le reverſion releſſa a celuy en le remainder et a ſes heires tout ſon droit, &c. donqz celuy en le remainder ad un fee, &c. et il avera un briefe de Waſte envers le tenant a terme de vie ſans aſcun attornement de luy, &c.

¶ IN the ſame manner, and for the ſame cauſe is it, where a man letteth land to another for life, the remainder to another for life, reſerving the reverſion to the leſſor; in this caſe, if he in the reverſion releaſeth to him in the remainder and to his heirs all his right, &c. Then he in the remainder hath a fee, &c. And he ſhall have a Writ of Waſte againſt the tenant for life without any attornment of him, &c.

Vide Sect. 549. 553. 556.

This needeth no explication.

Sect. 576, 577.

¶ There have been now, in all, ſeven Examples that Littleton putteth of an Attornment in Law; & here he putteth two caſes alſo of a notice in Law. And the reaſon of both theſe are here rendred by Littleton. First for the notice, Littleton ſaith, that the Leſſee ſhall not by Law be miſconuſant of the Feoffments that were made of and upon the ſame land. And the reaſon of the Attornment is, becauſe the whole Fee-ſimple paſſeth by the Feoffment, and the Leſſee by his regreſs leaveth the reverſion in the Feoffee, (which ſaith Littleton) is a good Attornment. The ſame Law it is of a Tenant by Statute Merchant, or Staple, or Elegit. And ſo it is of a Leaſe for life, as Littleton here ſaith; and ſo it was reſolved (c) in Brasbritches caſe, and after in the Dean of Pauls his Caſe in the

46 E. 3. 30. b. 2 H. 5. 4. 5 H. 5. 12. 34 H. 6. 6. 18 E 3. 47. 9 H. 6. 10.

(c) Brasbritches caſe. p. 15. Eliz. Dean of Pauls caſe. 29 Eliz.

¶ ITem, ſi home leſſa terres ou Tenements a un auter pur terme des ans, et puis il ouſta ſon termour, et ent enfeoffa un auter en fee, et puis le tenant a terme dans enter ſur le feoffee, enclaimant ſon terme, &c. et puis fait waſte, en ceſt caſe le feoffee avera per la ley un briefe de waſte envers luy, et uncore il nattornaſt pas a luy. Et la cauſe eſt, come jeo ſuppoſe, pur ceo que celuy que ad droit de aver terres ou tenements pur terme dans, ou auterment, ne ſeroit per la ley miſconuſant de les feoffements que fueront faits

ALſo, if a man let lands or tenements to another for term of years, and after he ouſt his termor, and thereof enfeoffe another in Fee, and after the tenant for years enter upon the feoffee, claiming his term, &c. and after doth waſte; in this caſe the feoffee ſhall have by law a Writ of Waſte againſt him, and yet he did not attorn unto him. And the cauſe is, as I ſuppoſe, for that he which hath right to have lands or tenements for years, or otherwiſe, ſhould not by Law be miſconuſant of the feoffements which were made of & upon the ſame

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de et ſur meſmes les terres, &c. et tenant que per tiel Feoffement le tenant a terme dās ſuit mis hors de ſon poſſeſſion, & p ſon entre il cauſait le reverſion deſtre a celuy a que le feoffment fuit fait, ceo eſt bone attornement: car celuy a que le feoffment fuit fait, avoit nul reverſion devaunt que le tenant a terme dans avoit enter ſur luy, pur ceo que il fuit en poſſeſſion en ſon demeſne come de fee, & per lent del tenant a term̄ dans il y ad forſque un reverſion, quel eſt p le fait l' teſt a term̄ dans, s̄, p ſon entrie, &c.

lands, *&c.* and inaſmuch as by ſuch feoffment the tenant for years was put out of his poſſeſſion, and by his entry he cauſed the reverſion to be to him to whom the feoffement was made, this is a good attornment, for he to whom the feoffment was made had no reverſion before the tenant for years had entred upon him, for that he was in poſſeſſion in his demeſne as of fee, and by the entry of the Tenant for years, he hath but a reverſion, which is by the act of the tenant for years, *ſ.* by his entry, *&c.*

Sect. 577.

¶ Meſme la ley eſt, come il ſemble, lou un Leas eſt fait pur terme de vie, ſavant le reverſion al Leſſor, ſi l' Leſſor diſſeiſt le Leſſee, & fait feoffment en Fee, ſi le tenant a terme de vie enter & fait waſte, le feoffee avera briefe de waſte ſans aſcun auter attornment, Cauſa qua ſupra, *&c.*

THe ſame Law is, as it ſeemeth, where a Leaſe is made for life, ſaving the reverſion to the Leſſor, if the leſſor diſſeiſe the Leſſee, and make a feoffment in Fee, if the Tenant for life enter and make waſte, the feoffee ſhall have a Writ of Waſte without any other attornment, *cauſa qua ſupra*, &c.

Common place. But ſhall the Leſſee in this caſe whether he will or no do an Act that amounts to an Attornment, viz. by his regreſs, or elſe loſe the profit of his land? And ſome do hold that in that caſe, if the Leſſee for life do recover in an Aſſiſe, this is no Attornment, becauſe he comes to it by courſe of Law, and not by his voluntary act. And yet in that caſe, as in the caſe of the fine, the ſtate of the reverſion is in the feoffee. (f) But others do hold it all one in caſe of a recovery, and a regreſs. 34 H.6.7

(g) If the Leſſor diſſeiſe Tenant for life or ouſt Tenant for years, and maketh a feoffment in fee: by this the rent reſerved upon the leaſe for life or years is not extinguiſhed, but by the the regreſs of the leſſee the rent is revived, becauſe it is incident to the reverſion; and ſo it hath been adjudged. But if a man be ſeiſed of a rent in Fee, and diſſeiſe the tenant of the land, and make a feoffment in fee, the Tenant re-entreth, this rent is not revived. And ſo note a diverſity between a rent incident to a reverſion, and a rent not incident to a reverſion.

(f) 18 E.3.48.b. Lib.6.fol.60.b. Sir Moyle Finches caſe.

(g) 9 H.6 16. Dean of Pauls caſe. ubi ſupra.

If two joynt Leſſees for years, or for life, be ouſted or diſſeiſed by the leſſor, and he enfeoffe another, if one of the leſſees re-enter, this is a good Attornment, and ſhall bind both; for an Attornment in law is as ſtrong as an Attornment in Deed.

If a man make a leaſe for life, and then grant the reverſion for life, and the Leſſee attorn, and after the Leſſor diſſeiſe the leſſee for life, and make a feoffment in fee, and the leſſee re-enter this ſhall leave a reverſion in the Grantee for life, and another reverſion in the feoffer; and yet this is no Attornment in law of the Grantee for life, becauſe he doth no act, nor aſſent to any which might amount to an Attornment in Law. Et res inter alios acta alteri nocere non debet. Neither hath the grantee for life the land in poſſeſſion, ſo as he may well be miſcontinuant of the feoffment made upon the land, and ſo out of the reaſon of Littleton. But yet the reverſion in fee doth paſs to the Feoffee.

Sect. 578.

¶ HEre it appeareth, that where the Anceſtor taketh an eſtate of Freehold, and after a Remainder is limited to his right heirs, that the Fee-ſimple veſteth in himſelf, as well as if it had been limited to him and to his heirs; for his right heirs are in this caſe words of limitation of eſtate, and not of purchaſe. Otherwiſe it is, where the Anceſtor taketh but an Eſtate for years: As if a leaſe for years be made to A. the remainder to B. in tail, the remainder to the right heirs of A. there the remainder veſteth not in A. but the right heirs ſhall take by purchaſe, if A. die during the eſtate Tail; for as the Anceſtor and the heir are Correlativa of inheritance, ſo are the Teſtator and executor, or the Inteſtate and Adminiſtrator of Chattels. And ſo it is, if A. make a Feoffment in fee to the uſe of B. for life, and after to the uſe of C. for life, or in tail, and after to the uſe of the right heirs of B. B. hath the Fee-ſimple in him, as well when it is by way of limitation of uſe, as when it is by Act executed.

¶ ITem, ſi leas ſoit fait pur terme d vie, le remainder a un auter en le Taile, le remainder ouſter a les droit heires le tenant a terme de vie; En ceſt caſe ſi le tenant a terme de vie granta ſon remainder en fee a auter per ſon Fait, cel remainder maintenant paſſa per le fait ſans aſcun Attournement, &c. Car ſi aſcun doit attorne en ceſt caſe, ceo ſerroit le Tenant a terme de vie, et en vain ſerroit que il atturneroit ſur ſon grant demeſne, &c.

ALſo, if a Leaſe be made for life, the remainder to another in tail, the remainder over to the right heirs of the tenant for life; in this caſe if the Tenant for life grant his remainder in Fee to another by his deed, this remainder maintenant paſſeth by the deed without any Attornment, *&c.* for that if any ought to attorn in this caſe, it ſhould be the Tenant for life; and in vain it were that he ſhould attorn upon his own Grant, *&c.*

¶ *En vaine ſerroit, &c.* Quod vanum & inutile eſt Lex non requirit. Lex eſt ratio ſumma, quæ jubet quæ ſunt utilia & neceſſaria, & contraria prohibet, and arguments drawn from hence are forcible in Law.

Vid. Sect. 194. 273.

Sect. 579.

¶ ITem, ſi ſoit Seignior et tenant, et le Tenant tient del Seignior per certaine rent en ſervice de chivalier, ſi le Sñr granta les ſervices de ſon tenñt p fine, les ſervices ſont maintenant en le grantee per force del fine, mes uncore le Sñr ne poit pas diſtreyne p aſcun parcel de les ſervices ſans attournment: Mes ſi le tenant devia (ſon heire deins age) le Sñr avera le gard del

ALſo, if there be Lord and Tenant, and the Tenant holdeth of the Lord by certain Rent and Knights ſervice, if the Lord grant the ſervices of his Tenant by fine, the ſervices are preſently in the Grantee by force of the fine: but yet the Lord may not diſtrein for any parcel of the ſervices, without Attornment. But if the Tenant dieth, his heir within age, the Lord ſhall have the wardſhip,

corps

corps del heire, et de ses terres, &c. coment que il ne unqs atturnast, pur ceo que le Seignioʒie fuit en le grantee, maintenant per force de fine. Et auxy en tiel cas, si le tenant moʒust sans heir, le Seignioʒ avera les tenements per voy descheat.

of the body of the heir, and of his lands, &c. albeit he never attorned, because that the Seigniory was in the Grantee presently by force of the fine. And also in such case, if the Tenant die without Heir, the Lord shall have the Tenancie by way of Eschear.

¶ HEre Littleton beginneth to shew what advantages the Comisee of a Fine may take before Attoʒnment, and what not.

(h) First, he cannot distrain, because an Avowʒy is in lieu of an Action, and thereunto pʒivity is requisite. So likewise, and foʒ the same cause he cannot have an Action of waste, noʒ writ of Entry, ad Communem legem, oʒ in consimili casu, oʒ in Casu proviso, wʒit of Customs and services, noʒ writ of ward, &c.

(h) 8 E.3.44.26 E.3. 63.10 H.6.16.34 H.6.7. 12 E.4.4.40 E.3.7.3. H.5.12.48 E.3.15.b.3. E.2.Droit.33.

But if a man make a Lease foʒ yeʒrs, and grant the reversion by fine, if the Lesse be ousted, and the Conusee disseised, the Comisee without Attoʒnment shall maintain an assise, foʒ this wʒit is maintained against a stranger, where there needeth no pʒivity. And such things as the Loʒd may seise oʒ enter into without suing any Action, there the Comisee before any Attoʒnment may take benefit thereof, as to seize a ward oʒ Heriot, oʒ to enter into the Lands oʒ tenements of a ward, oʒ escheated to him, oʒ to enter foʒ an alienation of Tenant foʒ life oʒ yeaʒs, oʒ of Tenant by Statute-Merchant, Staple, oʒ Elegit, to his disherison.

Sect. 580,581.

¶ EN meisme le manner est, si home granta le reversion de son tenant a terme de vie, a un auʒ per fine, le reversion passa maintenant al Grantee per force del fine, mes le grantee jammes naʒa Action de Wast sans atturnment, &c.

IN the same manner it is, if a man grant the reversion of his tenant for life, to another by fine, the reversion maintenant passeth to the Grantee by force of the fine, but the Grantee shall never have an Action of waste without Attornment, *&c.*

Sect. 581.

¶ MEs uncoʒe si le Tenant a terme de vie alienast en fee, le grantee poit enter, &c. pur ceo que l'reversion fuit en luy per force del Fine, et tiel alienation fuit a son disheritance.

BUt yet if the tenant for life alieneth in Fee, the grantee may enter, *&c.* because the Reversion was in him by force of the fine, and such Alienation was to his disheritance.

¶ IT is said in our Books, That if tenant foʒ life hath a pʒiviledge not to be impeachable of waste, oʒ any other pʒiviledg, if he doth attoʒn without saving his pʒiviledg, that he hath lost it, which is so to be understood, where he attoʒns in a Quid juris clamat, bʒought by the Comisee of a fine, that if he claimeth not his Pʒiviledg, but attoʒn generally, his pʒiviledg is lost, foʒ that the wʒit supposeth him to be but a bare Tenant foʒ life, and by his general Attoʒnment according to the wʒit he is barʒ'd foʒ ever to claim any pʒiviledg, but a bare Estate foʒ life. But if upon a grant of the reversion by deed, the Tenant foʒ life doth attoʒn, he loseth no pʒiviledg; foʒ there can be no conclusion, oʒ bar by the attoʒnment in pais: and so it is of an attoʒnment in Law, as if the Lessoʒ disseise the lessee foʒ life, and make a feoffment in fee, & the Lessee reenter, this is an attoʒnment in law, which shall not pʒejudice him.

40 E.3.7.13 E.3.5. 48 E.3.32.43 E.3.6. 21 E.3.48.24 E. 3.32. 39 H.6.25.F.N.B.136.b.

Sect.

of any priviledge: ſo it is if the leſſor levie a Fine of the reverſion, and the Conuſee die without heir, whereby the Reverſion eſcheateth, in this caſe the law doth ſupply an Attornment, and therefore the leſſee ſhall loſe no priviledge. But in the Quid juris clamat, if the leſſee ſhew his Eſtate and his priviledge, and is ready, ſaving to him his priviledge, &c. to attorn hereby either his priviledge ſhall be allowed and entred of record, or he ſhall not be compelled to attorn: (b) and if the Plaintiff be within age, ſo as he cannot acknowledge the priviledge, the tenant ſhall not be compelled to attorn until his full age, when he may acknowledge it. But otherwiſe it is (as ſome hold) if a Quid juris clamat be brought by Baron and Feme, the priviledg ſhall be entred into the Roll notwithſtanding ſhe is a Feme Covert. And in a per quæ ſervitia brought by the Conuſee of the meſne, the Tenant may ſhew that he held by homage Aunceſtrel, and ſaving to him his warranty and acquital, he is ready to attorn. In the ſame manner, if the Tenant hath any other acquital, and the Meſne levie a fine to one for life, the remainder to another in Fee, the Tenant for life bringeth a per quæ ſervitia, and the Tenant is ready to attorn, ſaving his acquital, and the Plaintiff, acknowledgeth it, and thereupon the Tenant attorn. Tenant for life dieth; in this caſe, albeit regularly, the Attornment to the Tenant for life is an Attornment to him in the remainder, yet in this caſe he in the remainder ſhall not diſtrain, till he hath acknowledged the acquital, which muſt be in a per quæ ſervitia brought him by againſt the Tenant.

(b) 43 E. 3. 5.

45 E. 3. 11. a. Vet. N. B. in Per quæ ſervitia. 5. E. 3. Meſne 56. & per quæ ſervitia 16. 37 H. 6. 33. 39 H. 6. 25. 18 E. 4. 7.

Vide Sect. 557.

Sect. 582.

¶ MEs en ce cas lou le Sñr granta l'ſ ſervices ô ſon tenant per fine, ſi Tenant devie (ſon heire eſteant de plein age) le grantée per l' fine navera reliefe, ne unques diſtreina pur reliefe, ſi non que il avoit lattornement del Tenant que moruſt, car de tiel chose que giſt en diſtreſſe, ſur que le Bře ô replevin eſt ſue, &c. home doit & covient davower l' prisel doñ ed voiturel, &c. et la covient eſtre attornement del tenant, coment que le graunt de tiel chose ſoit per fine, mes daver le gard de les terres ou tenemñts iſſint tenus durant le nonage heire, ou ô eux aver per voy deſcheat, la ne beſoigne aſcun diſtreſſe, &c. mes un entrie en la terre per force de le droit del ſeignioríe q̃ le grantee ad per force del Fine, &c. Sic vide diverſitatem.

But in this caſe where the Lord granteth the ſervices of his Tenant by fine, if the Tenant die (his heir being of full age) the grantee by the fine ſhall not have relief, nor ſhall ever diſtrein for relief; unleſs that he hath the Attornment of the Tenant that dieth: for of ſuch a thing which lieth in Diſtreſs, whereupon the writ of Replevin is ſued, *&c.* a man muſt and ought to avow the taking good and rightful, *&c.* & there ought to be an Attornment of the tenant, although the grant of ſuch a thing be by fine: but to have the wardſhip of the lands or tenements ſo holden during the nonage of the heir, or to have them by way of eſcheat, there needs no diſtreſs, *&c.* but an entry into the Land by force of the right of the Seigniory, which the Grantee hath by force of the fine, *&c.* *Sic vide diverſitatem*, &c.

¶ *Alien en fee*, &c. Of this ſufficient hath been ſaid in the next precedent Section.

¶ *Navera reliefe*, &c. Of this ſufficient hath been ſaid in the next precedent Section.

Sect.

Sect. 583.

ITem ſi ſoit Seignior, meſne, & tenant, & le meſne granta per fine les ſervices de ſon tenant a un auter en fee, & puis le grantee morust ſans heire, ore les ſervices des meſnaltie devienderont & eſcheate al Seignior Paramont per voy deſcheat; & ſi apres les ſervices del meſnaltie ſont adevere, en ceſt cas celuy que fuit Seignior Paramont poit diſtreiner le tenant, nient obſtant que le tenant ne unques atturnaſt; et le cauſe eſt, pur ceo que le meſnaltie fuit en fait en le grantee per force de le dit fine, et le Seignior Paramont puiſſoit avower ſur le grantee, pur ceo que il fuit ſon tenant en fait, coment que il ne ſerroit a ceo compelle, &c. Mes ſi le grantor en ceſt caſe deviaſt ſans heire en la vie le grantee, donque il ſerroit compelle davower ſur le grantee, et auxy entant que le Seignior Paramont claime le meſnaltie per force del graunt fait per fine levie per le meſne, mes per vertue de ſon Seigniorie Paramont, ſ. per voy deſcheat, il avowa ſur le tenant pur les ſervices que le meſne avoit, &c. coment que le tenant ne unques atturna pas.

ALſo, if there be Lord, Meſne and Tenant, and the Meſne grant by fine the ſervices of his Tenant to another in fee, and after the grantee die without heir, now the ſervices of the meſnaltie ſhall come and eſcheat to the Lord Paramount by way of eſcheat; and if afterwards the ſervices of the Meſnalty be behind; in this caſe he which which was Lord Paramount may diſtrain the Tenant, notwithſtanding that the Tenant did never attorn; and the cauſe is, for that the Meſnalty was in Deed in the Grantee by force of the ſaid fine, and the Lord Paramount may avow upon the Grantee, becauſe indeed he was his Tenant, albeit he ſhall not be compelled to this, *&c.* But if the grantor in this caſe had died without heir in the life of the Grantee, then he ſhould be compelled to avow upon the Grantee; and alſo in as much as the Lord Paramount doth not claim the Meſnalty by force of the Grant made by fine levied by the Meſne, but by vertue of his Seigniory Paramount, *viz.* by way of eſcheat, he ſhall avow upon the Tenant for the ſervices which the Meſne had, *&c.* albeit that the Tenant did never attorn.

HEre Littleton putteth a caſe, where one that claimeth under a Conuſee by fine may diſtrain or maintain any action, albeit there was never any attornment made to the Conuſee, or to him that hath his eſtate. 45 E. 3. 2. 34 H. 6. 7. 37 H. 6. 38. 39 H. 6. 32. 5 H. 7. 18. per Curiam. Lib. 6. fol. 68. Sir Moyle Finches caſe.

And here is a diverſity between an act in Law that giveth one inheritance in lieu of another; and an act in Law that conveyeth the eſtate of the Conuſee only. Of the former Littleton here putteth an example of the eſcheat of the Meſnalty which drowneth the Seigniory Paramount; and therefore reaſon would that the Lord by this act in law ſhould have as much benefit of the Meſnalty eſcheated, as he had of the Seigniory that is drowned; & the rather for that the Law caſteth it upon him, and he hath no remedy to compel the Tenant to

attorn. Another reason hereof Littleton here yeeldeth, because the Lord cometh to the Mesnaltie by a Seigniory Paramount, and therefore there needeth no attornment. (c) As if Lessee for life be of a Manno, and he surrender his estate to the Lesso, there needeth no attornment of the Tenants, because the Lesso is in by a title Paramount. But if the Consee dieth, and the Law casteth his Seigniory upon his heir by descent, he shall not be in any better estate than his Ancestor was, because he claimeth as heir meerly by the Consee.

(c) Temps E. 2. Attorn. 18. 39 H. 6. 38. per Prisot.

So it is (as hath been said) if the Consee of a fine before Attornment bargaineth and sileth the Seigniory by deed indented and inrolled, the Bargainee shall not distrain, because the Bargainor, from whom the Seigniory moveth, had never actual possession.

So and for the same reason if a reversion be granted by fine, and the Consee before Attornment disseise the Tenant for life, and make a feoffment in fee, and the Lesee re-enter, the feoffee shall not distrain.

Sir Moyle Finches case, ubi supra.

Sect. 584.

HEre Littleton expresseth two diversities, first between an act in Law, and the grant of the party. This case is put of an (d) escheat, which is a meer act in Law; but so it is when it is partly by act in Law, and partly by the Act of the party; as if the Consee of a Statute Merchant extendeth a Seigniory or rent, he shall distrain without any Attornment. If a man make a lease for life or years, and after levie a fine to A. to the use of B. and his heirs, B. shal distrain and have an action of waste, albeit the Consee never had any Attornment, because the Reversion is vested in him by force of the Statute, and hath no remedy to compel the Lessee to attorn.

(d) 15 E 3. 2. 34 H. 6. 7. 5 H. 7. 18. per Curiam, 13 H. 4. avowry 237.

Lib. 6. fol. 68. in Sir Moyle Finches case.

27 H. 8. cap. 10.

And so it is of a bargain and sale by Deed indented and inrolled; but this is by force of a Statute since Littleton wrote.

Secondly, where he that cometh in by act in Law is in the per, as the heir of the Consee, who sitteth in his Ancestors seat, Tanquam pars antecessoris de sanguine, and the Lord by escheat, which is an estranger, and cometh meerly in the post.

EN meisme le maner est, lou le reversion dun tenant a terme de vie soit grant per fine a un auter en fee, & le grantee apres mourust sans heire, ore le Seignior ad le Reversion p voy descheat. Et si apres le tenant fait waste le Seignior avera briefe de wast envers luy, nient contrestant que il ne unques attorna, Causa qua supra. Mes lou un home claime per force del graunt fait per le fine, s. come heire, ou come assignee, la il ne distreinera ne avowera, ne avera action de wast, &c. sans Attornement.

IN the same manner it is, where the reversion of a Tenant for life is granted by fine to another in Fee, and the grantee afterwards dieth without heir, now the Lord hath the reversion by way of escheat; and if after the Tenant maketh waste, the Lord shall have a writ of Waste against him, notwithstanding that he never attorned, *Causa qua supra.* But where a man claimeth by force of the grant made by the fines, as heir, or as assignee, *&c.* there he shall not distrain nor avow, nor have an action of waste, *&c.* without Attorntornment.

Sect. 585.

ITem, en ancient Boroughs & Cities, lou terres & tene-

ALso, in ancient Boroughs and Cities, where Lands and Te-

ments

ments deins meſme les Boroughes & Cities ſont deviſable per teſtament per cuſtome & uſe, &c. ſi en tiel borough ou citie home ſoit ſeiſie de rent ſervice, ou de rent charge, et deviſa cel rent ou ſervice a un auter per ſon teſtament et mourſt, en ceſt cas celuy a que tiel deviſe eſt fait, poit diſtreiner le tenant pur le rent ou ſervice aderere, coment que le tenant nattorna pas.

ments within the ſame Boroughs and Cities are deviſable by teſtament, by cuſtome and uſe, *&c.* if in ſuch Borough or City a man be ſeiſed of a Rent ſervice, or of a Rent charge, and deviſeth ſuch rent or ſervice to another by his Teſtament and dieth, In this caſe he to whom ſuch deviſe is made, may diſtrein the Tenant for the rent or ſervice arere, although the Tenant did never Attorn.

¶ HEre doth Littleton put a caſe, where a man may have a Seignior, Rent, Reverſion or remainder meerly by the act of the party and may diſtrain, and have any action without any attornment, and that is by deviſe of Lands deviſable by cuſtome when Littleton wrote, by the laſt will and Teſtament of the owner. 34 H.6.6.5 H.7.18. 19 H.6.24.21 H.6.38.a F.N.B.121.n.

Sect. 586.

¶ EN meſme le manner eſt, lou home leſſa tiels tenements deviſables a un auter pur terme de vie, ou per terme dans, et deviſa le reverſion per ſon teſtament a un auter en fee, ou en fée taile, et mourſt, et puis le tenant fait waſte, celuy a que le deviſe fuit fait avera briefe de waſte, coment que le tenant ne unque attorna. Et la cauſe eſt pur ceo, que la volunt le deviſour fait per ſon Teſtament ſerra perfourme ſolonque lentent del deviſour, et ſi leffect de ceo girroit ſur lattournement del Tenant, donques per caſe le tenant ne voyle unques atturner, et donques le volunt del deviſor ne ſerroit unque perfourme, &c. et pur ceo le deviſee diſtreinera, &c. ou avera action de waſte, &c. ſans attournement. Car ſi home deviſa tiels Tenements a un auter per ſon Teſtament, Habend' ſibi in perpetuum, & mourſt, et le deviſee enter, ſi ad fée ſim-

IN the ſame manner is it, where a man letteth ſuch Tenements deviſable to another for life, or for yeares, and deviſeth the Reverſion by his Teſtament to another in Fee, or in Fee-taile, and dieth, and after the Tenant commits waſte, he to whom the deviſe was made ſhall have a writ of waſte, although the Tenant doth never attorn. And the reaſon is, for that the Will of the Deviſor made by his Teſtament ſhall be performed according to the intent of the Deviſor; and if the effect of this ſhould lie upon the Attornement of the Tenant, then perchance the Tenant would never Attorn, and then the Will of the Deviſor ſhould never be performed, *&c.* and for this the Deviſee ſhall diſtrain, *&c.* or he ſhall have an action of waſte, *&c.* without Attornment. For if a man deviſeth ſuch Tenements to another by his Teſtament, *Habend' ſibi in perpetuum*, and dieth, and the deple,

ple, Cauſa qua ſupra, uncore ſi fait de feoffment uſt eſtre fait a luy per le deviſor en ſa vie de meſmes les tenements, Habend' ſibi in perpetuum, et livery de ſeiſin ſur ceo fuit fait, il naveroit eſtate forſque pur terme de ſa vie.

viſee enter, he hath a Fee-ſimple, *Cauſa qua ſupra*; yet if a deed of feoffment had been made to him by the Deviſor of the ſame Tenements, *Habend' ſibi in perpetuum*, and livery of ſeiſin were made, upon this he ſhould have an eſtate but for term of his life.

¶ Both this and the precedent caſe ſtand upon one and the ſame reaſon, which Littleton here prefixeth, viz. becauſe that the will of the Deviſor expreſſed by his Teſtament ſhall be performed according to the intent of the Deviſor; and it ſhall not lie in the power of the tenant or leſſee to fruſtrate the will of the Deviſor by denying his attornment. Here Littleton mentioneth a maxime of the Common Law, viz. Quod ultima Voluntas teſtatoris eſt perimplenda ſecundam veram intentionem ſuam; and, reipublicæ intereſt ſuprema hominum teſtamenta rata haberi.

Vid. Sect. 167. Bracton. li. 11. f. 13. & f. 60. Fleta. lib. 2. cap. 15. Britton fo 78. & f. 212. b. 22 E. 3. 16. 34 H. 6. 7. 35 H. 7. 12. 19 H. 8. 4.

¶ *Teſtamentum.* Teſtamentum, i. teſtatio mentis, which is made nullo præſentis mœu periculi, ſed cogitatione mortalitatis. Omne teſtamentum more conſummatum.

¶ *Car ſi home deviſa tiels tenements a un auter, &c.* Here Littleton putteth a caſe, where the intent of the Teſtator ſhall be taken, viz. where a man by deviſe have a fee ſimple without theſe words, heirs; and here Littleton putteth the diverſity between a will and a feoffment.

Vide Sect. 167.

Now by the Statutes of 32 and 34 H. 8. (as hath been ſaid in the Chapter of Burgage,) Lands, Tenements and Hereditaments are deviſable, as by the ſaid Acts do appear.

Sect. 587.

¶ ITem, ſi home ſeiſie dun manor quel eſt parcel en demeſne et parcel en ſervice, et ent ſoit diſſeiſie, mes les Tenants que teignont del Manor ne unqs attornant a le Diſſeiſor, en ceſt cas coment que le Diſſeiſor moruſt ſeiſie, et ſon heire ſoit eins per deſcent, &c. uncore poit le Diſſeiſee diſtreine pur le rent arere, & avera les ſervices, &c. Mes ſi les Tenants viendront al Diſſeiſor, et dient, nous deveignomus voſtre tenants, &c. ou auter attornement a luy feſoyent, &c. et puis le Diſſeiſor moruſt ſeiſie, donque le Diſſeiſee ne poit diſtreine pur le rent, &c. pur ceo que tout le manor deſcendiſt al heire le Diſſeiſor, &c.

ALſo, if a man be ſeiſed of a Mannor which is parcel in demeſne and parcel in ſervice, and is thereof diſſeiſed, but the Tenants which hold of the Mannor do never attorn to the Diſſeiſor: In this caſe albeit the Diſſeiſor dieth ſeiſed, and his heir is in by deſcent, *&c.* yet may the Diſſeiſee diſtrain for the rent behind, and have the ſervices, *&c.* but if the tenants come to the Diſſeiſor and ſay, We become your tenants, *&c.* or make to him ſome other attornment, *&c.* and after the Diſſeiſor dieth ſeiſed, then the Diſſeiſee cannot diſtrain for the rent, *&c.* for that all the Mannor deſcendeth to the heir of the Diſſeiſor, &c.

¶ Littleton having ſpoken of eſtates gained by lawful conveyances, doth now ſpeak of eſtates gained by wrong. And here putteth a caſe of a diſſeiſin of a Mannor, where it appeareth, that the Diſſeiſor cannot diſſeiſe the Lord of the Rent or ſervices without the

the Attornment of the Tenants to the Diſſeiſor; for being an Attornment is requiſite to a feoffment and other lawful conveyances, a fortiori, a Diſſeiſor or other wrong-doer ſhall not gain them without Attornment. The like law is of an Abator and an Intruder. But albeit the Diſſeiſor hath once gotten the Attornment of the Tenants and payment of their Rents, yet may they refuſe afterwards for avoiding of their double charge. And here the attornment of the Tenant of a Mannor to a diſſeiſor of the demeans ſhall diſpoſſeſs the Lord of the rents and ſervices parcel of the Mannor, becauſe the demeans, Rents and ſervices make but one entire Mannor, and the demeans are the principal: but otherwiſe it is of rents and ſervice in groſs, as in this next Section our author teacheth us.

6 H. 7. 14. 11 H. 7. 21. 11 H. 4. 14. 2. b.

Sect. 588.

MEs ſi un tient de moy per rent ſervice, le quel eſt un ſervice en groſſe, et nient p reaſon de mon mannor, et un auter que nul droit ad claima le rent, et reſceive et prent meſme le rent de mon tenant per coherſion de diſtreſs, ou per auter forme, et diſſeiſiſt moy per tiel prender de rent, coment que tiel diſſeiſor morust iſſint ſeiſie en perpetuel de rent, uncore apres ſa mort jeo puiſſoy bien diſtreiner le tenant pur le rent que fuit arere devant le deceaſe del diſſeiſor, & auxi apres ſon deceas. Et la cauſe eſt, pur ceo que tiel diſſeiſor neſt pas mon Diſſeiſor forſque a ma election et ma volunt. Car coment que il prent le rent de mon tenant, &c. uncore jeo puiſſoy a touts foits diſtreiner mon tenant pur le rent arere, iſſint que il eſt a moy forſque ſicome jeo voille ſuffrer le tenant, eſtre per tant de temps arere pur paier a moy in le rent, &c.

But if one holdeth of me by rent-ſervice, which is a ſervice in groſs, and not by reaſon of my Mannor, and another that hath no right claimeth the rent, and receives and taketh the ſame rent of my Tenant by coertion of diſtreſs, or by other form, and diſſeiſeth me by ſuch taking of the rent; Albeit ſuch Diſſeiſor dieth ſo ſeiſed in taking of the rent, yet after his death I may well diſtrein the tenant for the rent which was behinde before the deceaſe of the Diſſeiſor, and alſo after his deceaſe. And the cauſe is, for that ſuch Diſſeiſor is not my diſſeiſor, but at my election and will. For albeit he taketh the rent of my tenant, &c. yet I may at all times diſtrain my tenant for the rent behind, ſo as it is to me but as if I will ſuffer the tenant to be ſo long time behind in payment of the ſame rent unto me, &c.

Sect. 589.

CAr le payment de mon tenant a un auter, aque il ne doit pas payer, neſt pas diſſeiſin a moy, ne ouſta moy pas de mon rent ſans ma volunt et ma election, &c. Car coment que jeo puiſſoy aver Aſſiſe envers tiel Per-

FOr the payment of my Tenant to another to whom he ought not to pay is no diſſeiſin to me, nor ſhall ouſt me of my rent, without my will and election, &c. For although I may have an aſſiſe againſt ſuch Pernor, yet this is at my eſe-

nor

noꝛ uncoꝛe ceo eſt a mon election, ſi jeo voile prender luy come mon diſſeiſoꝛ, ou non. Iſſint tiels deſcents de rents en groſs, ne oſſeront pas le Seignioꝛ de diſtreyner, mes a cheſcun temps ils poyent bien diſtreiner pur l'rent arere, &c. Et en ceſt caſe ſi apres le diſtreſſe de luy que iſſint tortiouſment prift le rent, jeo graunt per mon fait le ſervice a un auter, et le tenſt attourna, ceo eſt aſſetts bone, et les ſervices per tiel graunt et attournement maintenant ſont en le Grantee, &c. Mes auterment eſt, lou le rent eſt parcel de Manoꝛ, & le diſſeiſoꝛ moꝛuſt ſeiſie del Manoꝛ entire, come en le caſe procheine avant eſt dit, &c.

tion, whether I will take him as my Diſſeiſor, or no. So, ſuch deſcents of rents in groſs ſhall not ouſt the Lord of his Diſtreſs, but at any time he may well diſtrain for the Rent behind, *&c.* And in this caſe, if after the Diſtreſs of him which ſo wrongfully took the Rent, I grant by my Deed the ſervice to another, and the Tenant attorn, this is good enough, and the ſervices by ſuch grant and Attornment are preſently in the Grantee, *&c.* But otherwiſe it is, where the Rent is parcel of a Mannor, and the Diſſeiſor dieth ſeiſed of the whole Mannor, as in the caſe next before is ſaid, *&c.*

¶ HEre Littleton putteth a diverſity between a Rent ſervice parcel of a Mannor, whereof he had ſpoken before, and a Rent ſervice in Groſs. For a man cannot be diſſeiſed of a Rent ſervice in Groſs, Rent charge, or Rent ſeck, by Attornment or payment of the Rent to a ſtranger, but at his election; for the Rule of Law is, Nemo redditum alterius invito Domino percipere aut poſſidere poteſt; and our Author hath before * taught us, what be Diſſeiſins of Rents ſervices, Rents charges, and Rents ſecks; and payment to a ſtranger is none of them, but at the Lords election, as our Author here ſaith.

* Vid. Sect. 237, 238, 239, 240.

24 E. 3. 4. 1 E. 5. 5. See the Authorities there following in the next Paraph. 5 E. 4. 1. 23 H. 3. tit. Aſſ. 439. 24 E. 3 40. 34. 16. Aſſ. p. 15. 16 E. 3. Releaſe 56. 1 E. 5. 5. F. N. B. 179. E. 15. E. 4. 8. Flet. lib. 4. c. 2.

¶ *Pernor.* i. The taker of my rent. But if the diſſeiſee bring an Aſſiſe againſt ſuch a Pernor, then he doth admit himſelf out of poſſeſſion.

¶ *Deſcents.* A deſcent of a rent in groſs bindeth not the right owner, but that he may diſtrain, albeit he admitted himſelf out of poſſeſſion, and determined his Election, as by bringing of an Aſſiſe, &c.

If the Tenant of the land pay the Rent to a ſtranger which hath no right thereunto, and the right owner releaſe to him; this releaſe is good becauſe he thereby admitted himſelf to be out of poſſeſſion. But if the Tenant had given him any thing in name of Attornment, and the right owner had releaſed to him, this releaſe had been void, becauſe an Attornment only can be no diſſeiſin of the Rent.

¶ *Jeo grant per mon fait*, &c. This alſo proveth, that the right owner is not out of poſſeſſion, and that this grant over is a demonſtration of his election that he is in poſſeſſion.

Sect. 590.

¶ ITem, ſi jeo ſue ſeiſie dun manoꝛ parcel en demeſne et parcel en ſervice, et jeo done certaine acres del terre, parcel de demeſne de meſme l' manoꝛ a un

ALſo, if I be ſeiſed of a Mannor, parcel in Demeſne, and parcel in Service, and I give certain acres of the Land, parcel of the Demeſne of the ſame Mannor, to auter

auter en le taile, rendant a moy et a mes heires un certaine rent, &c. Si en cest case jeo sue dissesie de la Manor, et touts les tenants attornont et payont lour rents al dissesor, et auxy le dit tenant en tail pay a le rent per moy reserve al Dissesor, & puis le dissesor morust seisie, &c. et son heire entra, & est eins p descent, uncore en cest case jeo puisse bien distreigner le Tenant en le taile, & ses heires, pur le rent p moy reserve sur le done, scil. auxybien pur le rent esteant aderere devant le descent al heire le Dissesor, & auxy pur le rent que happa destre aderere apres mesm̃ le descent, nient obstant tiel moyant seisie del dissesor, &c. Et la cause est, pur ceo que quant home dona tenements en le taile, savant le reversion a luy, & il sur le dit done reserva a luy un Rent ou outers services, tout le rent et les services sont incidents a la reversion, & quant un home ad un reversion, il ne puissoit estre ouste de son reversion per le fait dun estrange home, si non que le tenant soit ouste de son estate et possession, &c. car cy longement que le Tenant en le Taile & ses heires continuant lour possession p force de mon done, cy longement est le reversion en moy et en mes heires, & entant que le rent & les services reserves sur tiel done sont incidents & dependants al reversiõ quecunque que ad le reversion avera mesme le Rent & Services, &c.

another in tail, yeelding to me and to my Heirs a certain Rent, &c. if in this case I be disseised of the Mannor, and all the Tenants attorn and pay their rents to the Disseisor, and also the said Tenant in Tail pay the Rent by me reserved, to the Disseisor, and after the Disseisor dieth seized, &c. and his Heir enter and is in by Descent, yet in this case I may well distrain the Tenant in tail and his Heirs, for the Rent by me reserved upon the Gift, *scil.* as well for the Rent being behind before the descent to the Heir of the Disseisor, as also for the rent which happeth to be behinde after the same descent, notwithstanding such dying seised of the disseisor, *&c.* And the reason is, for that when a man giveth lands in Tail saving the Reversion to himself, and he upon the said gift reserveth to himself a Rent or other services, all the rent and Services are incident to the Reversion, and when a man hath a Reversion he cannot be ousted of his Reversion by the Act of a Stranger, unless that the Tenant be ousted of his estate and possession, *&c.* For as long as the Tenant in tail and his Heirs continue their possession by force of my gift, so long is the reversion in me and in my Heirs: and in as much as the rent and services reserved upon such gift, be incident and depending upon the Reversion, whosoever hath the Reversion, shall have the same Rent and Services. *&c.*

Sect. 591.

¶ EMmeſne le manner eſt, lou jeo leſſa parcel del demeſne del maner a un auter pur terme de vie, ou pur terme dans, rendant a moy certaine rent, &c. coment que jeo ſoy diſſeiſie del manoꝛ, &c. & le diſſeiſoꝛ moꝛuſt ſeiſie, &c. et ſon heire eſteant eins per deſcent, uncoꝛe jeo diſtreiner pur le rent arere, ut ſupra, nient obſtant tiel deſcent. Car quant home ad fait tiel done en taile, ou tiel leas pur terme de vie, ou pur terme dans del parcel de le demeſne de un manoꝛ, &c. ſavant le reverſion a tiel donour ou leſſour, &c. & puis il ſoit diſſeiſie de le manoꝛ, &c. tiel reverſion apres tiel diſſeiſin eſt ſever del manoꝛ en fait, coment que ne ſoit ſever en droit. Et iſſint poyes veier (mon fits) diverſitie, lou il y ad un Manoꝛ parcel en demeſne & parcel en ſervices, les queux ſervices ſont parcel de meſme le manoꝛ nient incidents a aſcun reverſion, &c. et lou ils ſont incidents al reverſion, &c.

¶ IN the ſame manner is it, where I let parcel of the demeſne of the Mannor to another for term of life, or for term of years, rendring to me a certain rent, *&c.* albeit I be diſſeiſed of the mannor, *&c.* and the diſſeiſor die ſeiſed, *&c.* and his heir be in by deſcent, yet I may diſtrein for the rent arere, *ut ſupra*, notwithſtanding ſuch deſcent; for when a man hath made ſuch a gift in tail, or ſuch a leaſe for life, or for years, of parcel of the demeſnes of a Mannor, *&c.* ſaving the reverſion to ſuch donor or leſſor, *&c.* And after he is diſſeiſed of the Mannor, &c. ſuch reverſion after ſuch diſſeiſin is ſevered from the Mannor in deed, though it be not ſevered in right. And ſo thou mayſt ſee (my Son) a diverſity where there is a Mannor parcel in Demeſne and parcel in Services, which Services are parcel of the ſame Mannor not incident to any reverſion, *&c.* And where they are incident to the reverſion, *&c.*

¶ HEre Littleton putteth a diverſity between Rents and ſervices parcel of a Manoꝛ (whereof he had ſpoken beforꝛe) and Rents and ſervices incident to a reverſion parcel of a Manoꝛ.

And the reaſon of this diverſity is, foꝛ that as long as the Donee in tail, Leſſe foꝛ life, oꝛ leſſee foꝛ years, are in poſſeſſion, they preſerve the reverſion in the donoꝛ oꝛ leſſoꝛ; and ſo long as the Reverſion continues in the Donoꝛ oꝛ leſſoꝛ, ſo long too the rent and Services which are incident to the reverſion belong to the Donoꝛ oꝛ leſſoꝛ. Neither can the Donoꝛ oꝛ leſſoꝛ be put out of his reverſion, unleſs the Donee oꝛ leſſee be put out of their poſſeſſion; & if the Donee oꝛ leſſee be put out of their poſſeſſion, then conſequently is the Donoꝛ oꝛ leſſoꝛ put out of their reverſion. But if the Donee oꝛ leſſee make a regreſs and regain their eſtate and poſſeſſion, thereby do they ipſo facto revest the reverſion in the Donoꝛ oꝛ leſſoꝛ.

(a) 18. Aſſ. p. 2. 38 H. 6. 33 Pl. Com. Fulmerſtones caſe 103 Lib. 5. fo. 11. 11. 25. 19 E. 2. Briefe 845. 4 E. 3. Briefe 713.

And here is to be obſerved, that when a man is ſeiſed of a Mannoꝛ and maketh a gift in tail, oꝛ leaſe foꝛ life, &c. of parcel of the Demeſne of the Mannoꝛ, (a) the reverſion is part of the Mannoꝛ, and by the grant of the Mannoꝛ the reverſion ſhall paſs with the Attornment of the Donee oꝛ leſſee. But if the loꝛd make a gift in tail, oꝛ a leaſe foꝛ life, of the whole Mannoꝛ, excepting black Acre, parcel of the Demeſnes of the Mannoꝛ, and after he granteth away his Mannoꝛ, black Acre ſhall not paſs, becauſe during the eſtate tail oꝛ leaſe foꝛ life

lite it is ſevered from the Mannor. And ſo note a diverſity, that a Reverſion of part may be parcel of a Mannor in poſſeſſion: but a part in poſſeſſion cannot be parcel of the Reverſion of a Mannor expectant upon any eſtate of Freehold. But if a man make a Leaſe for years of a Mannor, excepting black Acre, and after granteth away the Mannor, black Acre ſhall paſs, becauſe the Freehold being entire, it remaineth parcel of the Mannor, and one præcipe of the whole Mannor ſhall ſerve. But otherwiſe it is in caſe of the gift in tail, or leaſe for life, excepting any part; there muſt be ſeveral Writs of præcipe, becauſe the Freehold is ſeveral.

CHAP. II. Of Diſcontinuance. *Sect.592.*

¶ DIſcontinuance eſt un ancient parol en la ley, & ad divers ſignifications, &c. Mes quant a un entent, il ad tiel ſignification, ſ. lou un ad alié certaine terres ou tenemients & mozuſt, et un autre ad droit de aver meſmes les terres ou tenements, mes il ne poit enter en eux, per cauſe de tiel alienation, &c.

DIſcontinuance is an antient word in the Law, and hath divers ſignifications, &c. But as to one intent it hath this ſignification, *viz.* where a man hath alienned to another certain Lands or Tenements and dieth, and another hath right to have the ſame Lands or Tenements, but he may not enter into them, becauſe of ſuch alienation, &c.

¶ *Diſcontinuance* Vide Sect.737. Is a word compounded of de and continuo, for continuare is to continue without intermiſſion. Now by addition of de (Euphoniæ gratia dix) to it, which is privative, it ſignifieth an intermiſſion; Diſcontinuare nihil aliud ſignificat quam intermittere, deſueſcere, interrumpere. And as our Author ſaith, (a) it is a very antient word in Law. (a) 8 H.4.8.b.11 H.4.85.b.

A Diſcontinuance of Eſtates in Lands or Tenements is properly (in legal underſtanding) an alienation made or ſuffered by Tenant in Tail, or by any that is ſeiſed in auter droit, whereby the iſſue in tail, or the heir or ſucceſſor, or thoſe in reverſion or remainder, are driven to their Action and cannot enter.

All which is implied by the deſcription of our Author, and by the (&c.) in the end of this Section.

I have added (properly) by good warrant of our Author himſelf; for Sect. 470. he uſeth Diſcontinuance for a devеſting or diſplacing of a reverſion, though the entry be not taken away.

The Diſcontinuance conſiſteth in doing or ſuffering an Act be done, as hereafter ſhall appear. And where our Author ſaith, that it hath divers ſignifications, there is alſo a diſcontinuance of Proceſs conſiſting in not doing, where a Proceſs is not continued, concerning which there is an excellent Statute made in furtherance of Juſtice in (b) 1 E.6. and is well expounded in my Reports; and therefore need not here to be inſerted. (b) Vid. the Preamble of 1 E.6.ca.7. & 31 El. ca.1 Lib.7.f.30.31.&c. le caſe de diſcontinuance de proces.

There is another erroneous proceeding, and that conſiſteth in miſdoing, as when one Proceſs is awarded in ſtead of another, or when a day is given which is not legal, that is called a miſcontinuance, and if the Tenant or Defendant make default, it is error; but if he appear, then the miſcontinuance is ſalved, otherwiſe it is of a Diſcontinuance. But let us return to the Diſcontinuance of Eſtates in Lands, whereof Littleton doth entreat in this Chapter. 19 E.3.7.a.46 E.3.30. 37 H.6.25.26. 9 E.4.1.a.10 E.4. Vide Sect.74.174.194. 441.520.

¶ *Significations.* Here (as in many other places) it appeareth how neceſſary it is to know the ſignification of words.

And in this Chapter it appeareth, that when Littleton wrote, the eſtate in Lands, and Tenements, might have been diſcontinued five manner of ways, viz. by Feoffment, by fine, by Releaſe with warranty, Confirmation with Warranty, and by ſuffering of a recovery in a

præcipe quod reddat. And this was to the prejudice of five kinds of perſons, viz. of Wives, of Heirs, of Succeſſors, of thoſe in reverſion, and of thoſe in Remainder. But for Wives, and their Heirs, and for Succeſſors, the Law is altered by Acts of Parliament ſince Littleton wrote, as in this Chapter in their proper places ſhall appear.

Sect. 593.

¶ HEre Littleton putteth an example of a Diſcontinuance made by one ſeiſed in auter droit, as by an Abbot who had a fee-ſimple in the right of his Monaſtery, and therefore his Alienation without the aſſent of his Covent had been a Diſcontinuance at the Common Law, and had driven his Succeſſors to a writ De Ingreſſu ſine aſſenſu capituli.

Regiſt. Orig. f. 230. F. N. B. 195. Bracton, l. 4. fol 323. Flet. lib. 5. c. 34.

¶ De Ingreſſu ſine aſſenſu Capituli, &c. It is called ſo, becauſe the Alienation was ſine aſſenſu Capituli; for if it had been cum aſſenſu Capituli, It ſhould have been a bar to the Succeſſor. And becauſe the Succeſſor could not enter, the Common Law gave him this writ, and is ſo called of theſe words contained in the writ, which writ you may read in the Regiſter, and Fitzherberts N. B.

¶ Si come un Abbe ſeiſie de certaine terres ou tenemẽts en fee, & alienast meſmes les terres ou tenements a un auter en fee, ou en fee taile, ou per terme de vie, & puis l'Abbe morust, ſon ſucceſſor ne poit enter en les dits terres ou tenements, coment que il ad moit eux aver come en droit de ſon meaſon, mes il eſt mis a ſon action de recoverer meſmes les terres ou tenements, quel eſt appelle, Breve de ingreſſu ſine aſſenſu capituli, &c.

AS if an Abbot be ſeiſed of certain Lands or tenements in fee, and alieneth the ſame lands or tenements to another in fee, or in fee tail, or for term of life, and after the Abbot dieth, his ſucceſſor cannot enter into the ſaid Lands or Tenements, albeit he hath right to have them as in right of his houſe; but he is put to his action to recover the ſame Lands or Tenements, which is called a Writ, *Breve de ingreſſu ſine aſſenſu capituli, &c.*

2 Ed. 4. 26.

And here is to be noted, that in Law the Covent, albeit they be regular and dead perſons in Law, yet are they ſaid in Law to be Capitulum to the Abbot, as well as the Dean and Chapter, that be Secular, to the Biſhop. But it is to be obſerved and implied in this (&c.) that a ſole body politick that hath the abſolute right in them, as an Abbot, Biſhop, and the like, may make a Diſcontinuance, but a Corporation aggregate of many, as Dean and Chapter, Warden and Chaplains, Maſter and Fellows, Mayor and Commonalty, &c. cannot make any Diſcontinuance; for if they joyn, the Grant is good; and if the Dean, Warden, Maſter, or Mayor make it alone where the body is aggregate of many, it is void, and worketh a diſtreſſe. But now (as hath been ſaid) by the Statute of 27 H. 8. and 31 H. 8. all the Abbots, Priors, and other Religious perſons are ſo diſſolved, as there be none remaining this day, and by the Statutes of 1 El. c. 13 El. c. 10. and 1 Jac. cap. 3. Biſhops and all other Eccleſiaſtical perſons are diſabled to alien or diſcontinue any of their Eccleſiaſtical livings, as by the ſame Acts doth appear.

See more of this matter hereafter in this Chapter, Sect. 648. and before Sect. 538.

Sect. 594.

¶ EN droit ſa feme, &c. That is to ſay, in fee-ſimple, fee-tail,

ITem, ſi home ſeiſie de terre come en droit

ALſo, if a man be ſeiſed of Lands as in right of his

de sa feme, &c. et ent enfeoffa un auter, etc. et mozust, le feme ne puit enter, mes est mis a son action, le quel est appel, Cui in vita, &c.

wife, &c. and thereof infeoffe another, &c. and dieth, the Wife may not enter, but is put to her action, the which is called, *Cui in vita, &c.*

oz for life. Here Littleton putteth another case, where a man is seised in auter droit, and may make a Discontinuance, as the husband seised in the right of his wife; and therefore the Common Law gave her a Cui in vita, and her heir a Sur cui in vita, because they could not enter.

Bracton, l.4.f.202.& 22. & 324. Flet. lib.5.ca.34. & 36, F.N.B.193. Regist. 32 H.8.cap.28.

But this is altered since our Author wrote, by the Statute of 32 H. 8. by the purview of which Statute the wife and her heirs after the decease of her husband, may enter into the Lands oz Tenements of the wife, notwithstanding the alienation of her husband.

And here is one of the alienations to make a Discontinuance, viz. a feoffment; and where our Author speaketh of a husband seised in the right of his wife, so it is, where the husband and wife are joyntly seised to them and their heirs of an estate made during the coverture, and the husband make a feoffment in fee, and dieth, the wife now may enter within that Statute, although it was the Inheritance of them both. And so it is if the feoffment be made by the husband and wife, (albeit the words of the Statute be by the husband only) for in substance this is the act of the husband only.

Dyer 4.& 5. Ph.& Mary 146. 3 El.Dyer 191. Lib.8.fol.72.73. Greveleys case.

If the husband cause a præcipe quod reddat upon a faint title to be brought against him and his wife, and suffereth a recovery without any Voucher, and execution to be had against him and his wife, yet this is holpen by the Statute; for this by like construction is the act of the husband, and the words of the Statute be, made, suffered, oz done.

Greveleys case ubi sup.

If the husband make a feoffment in fee of the Lands which he holdeth in the right of his wife, and after they are divozced Causa præcontractus, yet the woman may enter within the purview of that Statute, and is not driven to her writ of Cui ante divortium, as she was at the Common Law, albeit the entry be by Statute given to the wife, and note upon the matter she was never his lawful wife. But it sufficeth that she was his wife de facto at the time of the alienation; and where her husband dieth she cannot be his wife at the time of the entry.

If the husband levie a fine with Pzoclamations, and dieth, the wife must enter oz avoid the Estate of the Conusee within five years, oz else she is barred for ever by the statute of 4 H. 7. for the Statute of 32 H. 8. doth help the Discontinuance, but not the bar; and the Statute speaketh of a fine with Pzoclamations.

6 E. 6. Dyer 72. b. 4 H.7.c.24.

If lands be given to the husband and wife, and to the heirs of their two bodies, and the husband maketh a feoffment in fee and dieth, the wife is holpen by the said Statute, as hath been said; & so is the issue of both their bodies. Tenant in tail taketh husband, the husband maketh a feoffment in fee, the wife before entry dieth without Issue, he in the reversion oz Remainder may enter. For first the Reversion oz Remainder cannot be discontinued in this case, because the estate taile is not discontinued. Secondly, the words of the Statute be Shall not be prejudicial or hurtful to the wife or her heirs, oz such as shall have right, title or interest by the death of such a wife, but that the same wife and her heirs, and such other to whom such right shall appertain after her decease, shall, oz lawfully may enter into all such Manors, Lands, &c. according to their rights and titles therein: by which words the entry of him in the Reversion oz Remainder in that case is preserved. The husband is tenant in taile, the remainder to the wife in taile, the husband makes a feoffment in fee, by this the husband by the Common Law did not only discontinue his own estate taile, but his wives remainder: but at this day after the death of the husband without issue, the wife may enter by the said Act of 32 H. 8. If the husband hath issue, and maketh a feoffment in fee of his wives Land, and the wife dieth, the heir of the wife shall not enter during the husbands life, neither by the Common Law, nor by the Statute.

Greveleys case, ubi supra. Paish. 7 Jac.

¶ Cui in vita, &c. Here is also implyed a Sur cui in vita, also for the heire. This writ here mentioned in our Author is so called of those words contained in the writ, which you may read in the Register and Fitzherbert N.B.

3 E.1.tit. Cui in vita 26. 34 Ass.pl.30. 10 E.3. 22. Dyer.21, El.363.

Sect. 595.

¶ *Enfeoffa un auter, &c.* Here is implied, or make a gift in tail, or an estate for life. Here Littleton putteth a third example of a Discontinuance made by Tenant in tail, so as his issue is put to his Formedon in the Descender, which is given to the issue in tail by the Statute of 13 E. cap. 1. because he cannot enter.

¶ *Item, si tenant en taile de certaine terre ent enfeoffa un auter, &c. et ad issue et mourt, son issue ne poit pas enter, en la terre coment que il ad title & mort a ceo, mes ell mis a son action que ell appel Formedon en le descender, &c.*

Also, if a tenant in tail of certain Land, thereof enfeoffe another, &c. and hath issue and dieth, his issue may not enter into the land albeit he hath title and right to this, but is put to his action which is called a *Formedon en le descender, &c.*

Plet. lib. 5. cap. 34. F. N. B. 211. 212. Register.

¶ *Tenant en taile:* This extendeth as well to a woman Tenant in tail as to a man, and was generally good Law when Littleton wrote; but now by the Statute of (d) 11 H. 7. if the woman hath any estate in tail joyntly with her husband, or only to her sole, or to her use, in any Lands or Hereditaments of the inheritance or purchase of her husband, or given to the husband and wife in tail by any of the Ancestors of the husband, or by any other person seised to the use of the husband or his Ancestors, and shall hereafter being sole or with any other after taken husband discontinue, &c. the same: every such Discontinuance shall be void, and that it shall be lawful for every person to whom the interest, title, or inheritance after the decease of the said woman should appertain, to enter, &c. So as if such a feme Tenant in tail do make any Discontinuance in fee, in tail, or for life, although it be without warranty, yet this doth not take away the entry after her death, either of the issue, or of him in reversion, or remainder. This Statute hath been exceedingly expounded by divers resolutions and judgments (e) which I have quoted in the margent, and are worthy of due observation.

(d) 11 H. 7. c. 2. Vide Sect. 667.

(e) Lib. 3. f. 50, 51. Sir George Browns case, eodem li. f. 60, &c. Linc. Coll. case, lib. 11. fo. 176. Mildmays case. Dyer 3 & 4 Ph. & Mar. 146. idem 8 El. 248. 27 El. 354. idem. 20 El. 262. 27 H. 8. 13. Lib. 5. fol. 79 Fitzh. case. Lib. 8. fol. 71. 72. Greveleys case.

If Lands were entailed to a man and to his wife, and to the heirs of their two bodies, and the husband had made a feoffment in fee and died, and then the wife died, this had been a discontinuance at the common Law: for the title of the issue is as heir of both their bodies, and not as heir to any one of them, and his entry must ensue his title or action.

¶ *De formedon.* De forma donationis, so called because the writ doth comprehend the form of the gift. And there be three kinds of writs of Formedon, viz. The first is the Descender to be brought by the issue in tail, which claim by descent per formam doni. The second is in the Reverter, which lieth for him in the reversion or his heirs or assigns after the issue tail be spent. The third is in the remainder, which the law giveth to him in the remainder, his heirs or assigns, after the determination of the estate tail; of all which you may read in the Register, and F. N. B.

Here Littleton sheweth that the issue in tail shall have a Formedon in the descender. what other actions Tenant in tail may have, and not have, is good to be seen.

(a) Tenant in tail shall have a Quod permittat.

(b) Tenant in tail shall have a writ of Customs and Services, In le debet, & solet, but shall not have it in the Debet only.

(c) In like manner he shall have a Secta ad molendinum in le debet & solet, but not in Debet tantum.

(d) Tenant in tail shall have a writ of Entre in consimili casu, and an Admeasurement, and a Nativo habendo, Cessavit, Eschear, Vaste, and the like.

(e) But tenant in tail shall not have a writ of Right Sur disclaimer, nor a Quo jure, nor a Ne injuste vexes, nor a Nuper obiit, or Rationabili parte, nor a Mordancestor, nor a Sur cui in vita; for these and the like none but tenant in fee shall have: and the highest writ that a Tenant in tail can have is a Formedon.

(a) 4 E. 3. 38. 43 E. 3. 25. 4 E. 4. 25. F. N. B. 124.
(b) 2 E. 2. Droit. 28.
(c) F. N. B. 123.
(d) 21 E. 3. 21. 5 E. 3. 23. 22 H. 4. 49.
(e) 2 E. 3. Droit. 28. 13 ri. 7. 24. 5 E. 4. 2. 20 E. 3. Avowrie 131. F. N. B. 10. 46 E. 3. tit. Cui in vita. 33.

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ITem, ſi ſoit teñ̃ le taile, le reverſiõ eſteant al donor & a ſes heires, ſi le tenant fait feoffment, &c. & morust ſans iſſue, celuy en le reverſiõ ne poit enter, mes eſt mis a ſon action de Formedon en le reverter.

ALſo, if there be tenant in tail, the reverſion being to the Donor and his heires, if the Tenant make a feoffment, &c. and die without iſſue, he in the reverſion cannot enter, but is put to his action of *Formedon in l'reverter*

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EN meſm̃ le maner eſt, lou tenãt en le taile ſeiſie de certaine terre dont le remainder eſt a un auter en le taile, ou a un auter en fee. Si le tenant en le taile alienast en fee, ou en fee taile, & puis deviast ſans iſſue, ceux en le remainder ne poiet enter, mes ſont mis a lour briefe de Formedon en le remainder, &c. & pur ceo que per force de tielx feoffments & alienations en les caſes avantdits, & en ſemblables caſes, ceux queux ont title & droit apres la mort de tiel feoffour ou alienour, ne poient pas enter, mes ſont miſes a lour actions, Ut ſupra, & p̃ ceo cauſe tielx feoffments & alienations ſont appels diſcontinuances.

IN the ſame manner is it, where tenant in taile is ſeiſed of certain Land whereof the remainder is to another in taile, or to another in fee. If the tenant in taile alien in fee, or in fee taile, and after die without iſſue, they in the remainder may not enter, but are put to their writ of *Formedon* in the remainder, &c. and for that that by force of ſuch feoffments and alienations in the caſes aforeſaid, and the like caſes, they that have title and right after the death of ſuch a feoffor or alienor may not enter, but are put to their actions, *Ut ſupra*; and for this cauſe ſuch feoffments and alienations are called diſcontinuances.

Fait Feoffement, &c. Here is implied Fee ſimple, Fee tail, or eſtate for life, & in this & the next Section Littleton putteth two caſes, where if the iſſues in tail fail, they in the reverſion and remainder are driven to their Formedon in reverſion or remainder, and this remaineth, as it was when Littleton wrote, not altered by any Statute. And the reaſon wherefore theſe Alienations in the ſeveral caſes in this & the next Section do make a diſcontinuance, and put him in the reverſion or remainder that right had to his Action, and took away his Entry, was for that he was privie in eſtate, and for the benefit of the Purchaſor, and for the ſafegard of his warranty, ſo as every mans right might be preſerved, viz. to the Demandant for his antient right, and to the Feoffee for the benefit of his warranty, which was founded upon great Reaſon and Equity, which benefit of the Warranty ſhould be prevented and avoided if the entry of him that right had were lawful, and thereby alſo the danger that many times happeneth by taking of poſſeſſions was warily prevented by Law. But then it may be demanded, ſeeing that there was no reverſion or remainder expectant upon any eſtate tail at the Common Law, nor the iſſue in taile had any remedy by the Common Law, if the Tenant in taile had alienedd, than by what Law is the alienation of Tenant in taile a Diſcontinuance to this day to the iſſue in taile, or to him in Reverſion or Remainder? Whereunto it is thus anſwered

Vide Sect. 562, 567, 601, 637, 638.

30 E. 1. Formedon 65. 19 E. 2. Formedon 61. 28 E. 4. 6. 12 E. 4. 3.

ſwered, that it is prouided by the Statute of W. 2. ca. 1. De donis conditionalibus, quod non habeant illi quibus tenementum ſic fuerit datum poteſtatem alienandi, &c. Upon theſe words the Sages of the Law haue conſtrued the ſaid Act according to the rule and reaſon of the Common Law, and that in diuers and ſundry variable manners. For ſome alienations of Tenant in taile they haue adjudged voidable by the Iſſue in taile by action only, ſome at the election of the iſſue in tail to auoid it by Action, Entry, or claim: ſome are meerly void by the death of the Tenant in tail: which ſeuerall Conſtructions were made upon the ſelf-ſame words aforeſaid.

18 E.3. 12. 19 E. 3. Bre. 468. 14 E.3. 18. 36. Aſſ. 8 22 R. 2. Diſcon. 5. E. 4. 3 4 H. 7. 17. 33. E. Formedon & 13. 7. Pl. Com. Smith & Stapletons caſe.

As for example, if Tenant in tail make a Feoffment in fee, this driues the iſſue in taile to his Action, which is called in Law a Diſcontinuance; and this conſtruction was made, for that at the Common Law the Feoffment of an Abbot or Biſhop, or of the husband ſeiſed in the right of his wife, did worke a Diſcontinuance, and did driue the ſucceſſor and the wife to their Action, and foreclosed them of their entry: and as the entry of the Iſſue was taken away, ſo conſequently of them in reuerſion and remainder. Alſo if an Abbot, Biſhop, or husband in the right of his wife, ſeiſed of a rent, or of any other inheritance that lieth in Grant, had alienedd, it was in the election of the Succeſſor or wife after the death of her husband to claim the rent, &c. or to bring an action, for that alienation did not worke a Diſcontinuance, and ſo it is by Conſtruction in caſe of Tenant in tail. Laſtly, if the Abbot, Biſhop, or Husband had granted a Rent newly created out of the land, &c. to another in fee, this had vtterly ceaſed by their death; and ſo it is alſo by Conſtruction in caſe of Tenant in tail. So as theſe words (Non habet poteſtatem alienandi) do worke theſe effects, viz. as to Lands, That a Feoffment barreth not the Iſſue, &c. of his Action, but worketh a Diſcontinuance to barre him of his Entry: as to Rents or any thing in eſſe, that lie in grant, that the ſaid words do take away his power to make any Diſcontinuance: as to Rents, &c. newly created that they take away his power to make them to continue longer than during his life.

But there is a diuerſity betwen an alienation working a diſcontinuance of an Eſtate which taketh away an Entry, and an alienation working, diueſting or diſplacing of Eſtates which taketh away no Entry. As if there be a Tenant for life, the remainder to A. in tail, the remainder to B. in fee, if tenant for life doth alien in Fee, this doth diueſt & diſplace the remainders, but worketh no Diſcontinuance. And therein it is to be obſerued, That to euery diſcontinuance there is neceſſary a diueſting, or diſplacing of the eſtate, and turning the ſame to a right: for if it be not turned to a right, they that haue the Eſtate cannot be driuen to an Action. And that is the reaſon that ſuch Inheritances as lie in Grant, cannot by Grant be diſcontinued, becauſe ſuch a Grant diueſteth no Eſtate, but paſſeth only that which he may lawfully grant; and ſo the eſtate it ſelf doth deſcend, reuert, or remain, as ſhall be ſaid hereafter in this Chapter.

A. maketh a gift in tail to B. who maketh a gift in taile to C, C. maketh a feoffment in Fee, and dieth without Iſſue, B. hath Iſſue and dieth, the Iſſue of B. ſhall enter; for albeit the Feoffment of C. did diſcontinue the reuerſion of the Fee ſimple which B. had gained upon the Eſtate taile made to C. yet could it not diſcontinue the right of Intaile which B. had, which was diſcontinued before: and therefore when C. died without Iſſue, then did the diſcontinuance of the Eſtate taile of B. which paſſed by his Liuery ceaſe, and conſequently the entry of the Iſſue of B. lawful; which caſe may open the reaſon of many other caſes.

Alſo note, That a diſcontinuance made by the husband did take away the entry only of the wife and her heirs by the Common Law, and not of any other which claimed by title paramount aboue the Diſcontinuance. As if Lands had been given to the husband and wife, and to a third perſon, and to their heirs, and the husband had made a Feoffment in Fee, this had been a diſcontinuance of the one moiety, & a diſſeiſin of the other moiety: if the husband had died, and then the wife had died, the ſurvivor ſhould haue entred into the whole, for he claimed not under the diſcontinuance, but by title paramount from the firſt Feoffor; and ſeeing the right by Law doth ſurvive, the Law doth give him a remedy to take advantage therof by entry, for other remedy for that moiety he could not have.

¶ *Fee, ou fee taile.* And ſo it is of an eſtate for life.

Sect.598,599,600.

¶ ITem, ſi Tenant en Taile ſoit diſſeiſie, & il releſſa per

ALſo, if Tenant in taile be diſſeiſed, and he releaſe by his

ſan

ſon fait a le Diſſeiſor, & a ſes heires tout le droit, le quel il ad en meſme les tenements, ceo ne pas Diſcontinuance, pur ceo que rien de droit paſſa al Diſſeiſor, forſque pur terme de vie del Tenant en le Taile, que fiſt le Releaſe, &c.

Deed to the Diſſeiſour and to his Heires all the right which he hath in the ſame Tenements, this is no diſcontinuance, for that nothing of the right paſſeth to the Diſſeiſor, but for terme of the life of Tenant in Taile, which made the Releaſe, &c.

Sect. 599.

¶ MEs per feoffment del Tenant en le Taile, fee ſimple paſſa per meſme le feoffement per force de Livery de ſeiſin, &c.

BUt by the Feoffment of Tenant in Taile, Fee ſimple paſſeth by the ſame Feoffment by force of the Livery of Seiſin, &c.

Sect. 600.

¶ MEs per force dun releaſe rien paſſera forſque le droit que il doit loyalment, & droiturelment releſſer, ſans ley de ou damage al auters perſons queux ent averont droit apres ſon deceaſe, &c. Iſſint il eſt grand diverſitie perenter un Feoffement dun tenant en le taile, & un Releaſe fait per tenant en le taile.

BUt by force of a Releaſe nothing ſhall paſs but the right which he may lawfully and rightfully releaſe, without hurt or damage to other perſons who ſhall have right therein after his deceaſe, &c. So there is great diverſity between a Feoffment of Tenant in Taile, and a releaſe made by Tenant in taile.

¶ OUr Author having put examples of Eſtates paſſing by tranſmutation of an Eſtate and Poſſeſſion, doth in this and the two Sections following put a diverſity between a Feoffment and a Releaſe or Confirmation of a bare Right: for it is a rule in Law, That the Diſſeiſee, or any other that hath a right only by his Releaſe or Confirmation, cannot make any diſcontinuance, becauſe nothing can fall thereby but that which may lawfully paſs. But otherwiſe it is of a Feoffment in reſpect of the Livery of Seiſin, for that it is the moſt ſolemn and common aſſurance in the Country, and to be maintained for the common quiet of the Realm: and by the Feoffment the freehold (which is ſo much eſteemed in Law) doth paſs by open livery to the Feoffee, and by the releaſe a bare right.

9 E.4.18. 12 E.4.11. 5 H.4.8. 21 H.6.58.

Sect. 601.

¶ MEs il eſt dit, que ſi le Tenant en taile en ceſt cas releſſa a ſon Diſſeiſor, & oblige luy & ſes hēs

BUt it is ſaid, that if the Tenant in taile in this caſe releaſes to his Diſſeiſor, and bind him and his heires to Warran-

¶ THe reaſon why the addition of the warranty in this caſe maketh a Diſcontinuance is that which hath been ſaid, viz. If the Iſſue in tail ſhould enter, the Warranty (which is ſo much favoured in

1 H. 4. 9. 22 E. 1. Deſcent 5. 12 E.4.11. 21 H.7.9. 43 E.3.8. 15 E.4. tit. Deſcent 30. Vide Sect. 596,602,637, 638.

in Law) ſhould be deſtroyed: and therefore to the end that if Aſſets in Fee ſimple doe deſcend, he to whom the Releaſe is made, may plead the ſame, and barre the Demandant: by which means all rights and advantages are ſaved. And that I may note it once for all; an (Il eſt dit) with Littleton, is as good as a Conceſſum in a Book Caſe.

a Garrantie & mort & teſt Garrantie diſtendiſt a ſon Iſſue, ceo eſt diſcontinuance per cauſe de la Garrantie.

tie, and dieth, and this Warranty deſcend to his Iſſue, this is a Diſcontinuance, by reaſon of the Warranty.

Sect. 602.

¶ Mes ſi un home ad Iſſue fits per ſa Feme, & ſa Feme morust, & puis il prent auter Feme, & Tenements ſont dones a luy & a ſa ſecond Feme, & a les heires de lour deux corps engendres, & ils ont iſſue un auter fits, & le ſecond Feme morust, & puis le Tenant en le taile eſt diſſeiſie, & il releſſa al Diſſeiſor tout ſon droit, &c. & oblige luy & ſes heires a le garrantie, &c. & devie, ceo neſt pas diſcontinuance al iſſue en le Taile per le ſecond Feme, mes il poit bien enter pur ceo que le garrantie diſcendiſt a ſon eigne frere que ſon pier avoit per le primer feme, &c.

But if a man hath iſſue a Son by his Wife, and his Wife dieth, and after he taketh another wife, and Tenements are given to him and to his ſecond wife, and to the Heires of their two bodies engendred, and they have iſſue another Son, and the ſecond wife dieth, and after the Tenant in taile is diſſeiſed, and he releaſe to the Diſſeiſor all his right, &c. and bind him and his Heirs to warranty, &c. and die, this is no Diſcontinuance to the Iſſue in Taile by the ſecond Wife, but he may well enter for that the Warranty deſcendeth to his elder Brother, which his Father had by the firſt Wife, &c.

Sect. 603.

¶ En meſme le manner eſt lou Tenements ſont deſcendable a le fits puiſne ſolonqz le Cuſtome de Burgh English, queux ſont entailes, &c. & le Tenant en le taile ad deux fits, & eſt diſſeiſie, & il releſſa a ſon Diſſeiſor tout ſon droit ove Garrantie, &c. & morust, & le puiſne fits poit enter ſur le Diſſeiſor, nient obſtant le Garrantie, pur ceo que le Garrantie deſcendiſt al eigne fits, car touts foits le Garran-

IN the ſame manner is it, where Lands are deſcendible to the youngeſt Sonne after the Cuſtome of Borough-Engliſh, which are entailed, &c. and the Tenant in Taile hath two ſonnes, and is diſſeiſed, and he releaſeth to his Diſſeiſour all his right with Warranty, &c. and dieth, the younger ſonne may enter upon the Diſſeiſor notwithſtanding the Warranty; for that the Warranty deſcendeth to the elder ſon: for always the Warrantie

tie deſcendera a celuy que eſt heire per le common ley.

ranty ſhall deſcend to him who is heir by the Common Law.

¶ By theſe two examples in this and the Section next following, it appeareth that a warranty being added to a releaſe or Confirmation, and deſcending upon him that right hath to the Lands, maketh a Diſcontinuance; otherwiſe it is out of the reaſon of the Law, and worketh no Diſcontinuance, if the warranty deſcendeth upon another.

¶ *Ove garrantie, &c.* Here is implied that he ought bind him and his heirs to warrant to the releaſe and his heirs.

¶ *Touts foits le garrantie deſtendiſt ſur le heire al Common ley.* This is a Maxim of the Common Law, and howſoever more ſhall be ſaid in the Chapter of warranty Sectione 718,735,736,737. ſo as it is not the warranty alone that maketh a Diſcontinuance, but the warrantie and the Deſcent upon him that right hath together. 13 H.4.Garrantie 94. 19 E.2,Garrantie 100.

Sect. 604.

¶ ITem, ſi un Abbe ſoit diſſeiſie, et il releſſa a le diſſeiſor ovesqe garrantie, ceo neſt pas Diſcontinuance a ſon ſucceſſor, pur ceo que rien paſſa per cel releas, forſque le droit que il ad durant le temps que il eſt Abbe, & le Garrantie eſt expire per ſon priuation, ou per ſa mort.

ALſo, if an Abbot be diſſeiſed and he releaſeth to the diſſeiſor with warranty, this is no Diſcontinuance to his Succeſſor, becauſe nothing paſſeth by this releaſe but the right which he hath during the time that he is Abbot, and the Warranty is expired by his privation, or by his death.

¶ The reaſon herein perſpied by Littleton is, for that the warrant is expired by his priuation or death.

¶ *Per ſon priuation, ou per ſa mort.* Note that priuation is here reſembled to death, and ſo is tranſlation alſo, wherein this diverſity is worthy of obſervation, that when a Biſhop, &c. make an eſtate, leaſe, grant of a Rent-charge, warranty, or any other act which may tend to the diminution of the priuiledges of the Biſhoprick, &c. which ſhould maintain the Succeſſor, there the priuation or tranſlation of the Biſhop, &c. is all one with his death. But where the Biſhop is Patron and Ordinary, and conſtituteth a Leaſe made by the Parſon without the Dean and Chapter, and after the Parſon dieth, and the Biſhop collateth another and then is tranſlated, yet his Confirmation remaineth good, for the Covenants that are to maintain the Succeſſor are not thereby diminiſhed. Vide 29.E.3.18. (m) 29 E.3.16.tit. garrant. 99. In caſe of reſignation, notwithſtanding (m) the Authority to the contrary.

Sect 605.

¶ ITem, ſi home ſeiſie en droit ſa feme eſt diſſeiſie, & il releſſa, &c. ove garrantie, ceo neſt pas diſcontinuance a la feme ſi il ſurveſquiſt ſon baron, mes que il poit enter, etc. Cauſa patet.

ALſo, if a man ſeiſed in the right of his Wife be diſſeiſed, and he releaſeth, &c. with Warranty, this is no diſcontinuance to the wife if ſhe ſurviveth her husband, but that ſhe may enter, &c. *Cauſa patet.*

¶ This is evident, unleſs the wife be heir to the husband (as by Law ſhe may be) and then it is a diſcontinuance for the cauſe aforeſaid.

Sect.

*Sect.*606.

ITem, ſi tenant en taile de certaine terre leſſa meſme la terr̄ a un auter pur terth des ans, per force de quel le leſſee ent eſt poſſeſſion, en quel poſſeſſion le tenant en taile per ſon fait releſſe tout le droit que il avoit en meſm le terre, a aver & tener a le leſſee & a ſes heirs a touts jours, ceo neſt pas diſcontinuance, mes apres le deceaſe le tenant en taile ſon iſſue poit bien enter, pur ceo que per tiel releaſe riens paſſa forſque pur terme de la vie de le tenant en le taile.

ALſo, if Tenant in taile of certaine Land letteth the ſame Land to another for term of yeares, by force whereof the Leſſee hath thereof poſſeſſion, in whoſe poſſeſſion the Tenant in taile by his Deed releaſeth all the right that he hath in the ſame Land, To have and to hold to the Leſſee and to his heires for ever; this is no diſcontinuance; but after the deceaſe of the Tenant in taile his iſſue may well enter, becauſe by ſuch Releaſe nothing paſſeth but for term of the life of the Tenant in taile.

¶ *CAr per tiel releas reins paſſa.* Here is one of the Maxims of the Common Law rehearſed by our Author, whereof he doth put divers examples hereafter.

*Sect.*607.

EN meſme le manner eſt, ſi le tenant en le taile, confirma leſtate le leſſee pur terme des ans, a aver & tener a luy & a ſes heires, ceo neſt pas diſcontinuance, pur ceo que riens paſſa per tiel confirmation forſque leſtate que le tenant en le taile avoit pur terme de ſa vie, &c.

IN the ſame manner it is, if the Tenant in taile confirm the eſtate of the Leſſee for years, To have and to hold to him and to his heirs; this is no diſcontinuance, for that nothing paſſeth by ſuch Confirmation, but the Eſtate which the Tenant in taile hath for term of his life, &c.

¶ *Riens paſſa per tiel confirmation.* Here is another of the Maxims of the Common Law rehearſed by our author, whereof he putteth examples hereafter. More ſhall be ſaid hereof in the next Section following.

*Sect.*608.

ITem, ſi tenant en taile apres tiels leas granta le reverſion en fee per ſon fait a auter, & poſſe

ALſo, if Tenant in tail after ſuch leaſe grant the reverſion in fee by his Deed to another, and will

que

que apres le terme fine, q̄ mesme le terre remaindroit a le grantee & a ses heires a touts jours, & le tenant a terme dans attorna, ceo nest pas discontinuance. Car tiels choses queux passont en tiels cases de tenant en le taile tant solement per voy de graunt, ou per confirmation, ou per tiel release, rien poit passer pur faire estate a celuy a que tiel graunt, ou confirmation, ou release est fait, forsque ceo que le tenant en taile, poit noturelment faire, & ceo nest forsque p̄ terme de sa vie, &c.

lerh that after the term ended, that the same Land shall remain to the grantee and his heirs for ever, and the Tenant for years attorn, this is no Discontinuance. For such things which pass in such cases of Tenant in tail only by way of grant, or by confirmation, or by such release, nothing can pass to make an estate to him to whom such grant, or confirmation, or release is made, but that which the tenant in tail may rightfully make, and this is but for term of his life, &c.

Sect. 609.

CAr si jeo lessa terre a un home pur terme de sa vie, &c. & le tenaut a term de vie lesse meisme la terre a un auter pur terme des ans, &c. & puis mon tenant a terme de vie granta le reversion a un auter en fee, & le tenant a terme des ans attorna, en cest case le grantee nad en le franktenement forsque estate per terme de vie son grauntor, &c. & jeo que suis en le reversion de fee simple, ne puisse enter per force de tiel grant del reversion fait per mon tenant a terme de vie, pur ceo que per tiel grant mon reversion nest pas continue, mes touts temps demurt a moy, sicome il fuit advenant, nient obstant tiel grant del reversion fait al grantee a luy & a ses heires, &c. pur ceo que riens passa per force de tiel grant forsque estate que le grantor avoit, &c.

FOr if I let Land to a man for term of his life, &c. and the Tenant for life letteth the same Land to another for term of years, &c. and after my tenant for life grant the Reversion to another in fee, and the tenant for years attorn, in this case the grantee hath in the freehold but an estate for term of the life of his grantor, &c. And I which am in the reversion of the fee simple may not enter by force of this grant of the reversion made by my tenant for life, for that by such grant my reversion is not discontinued, but always remains unto me as it was before, notwithstanding such grant of the reversion made to the grantee, to him and to his heirs, &c. becaufe nothing passed by force of such grant, but the estate which the grantor hath, &c.

Sect.

Sect. 610.

¶ EN meſme le maner eſt, ſi le tenant a terme de vie, per ſon fait confirme l' eſtate ſon leſſee pur terme de ans, a avet & tener a luy & a ſes heires, ou releſſa a ſon leſſee & a ſes heires, uncore le leſſee a terme dans, nad eſtate forſque pur terme de vie de le tenant a terme de vie, &c.

¶ IN the ſame manner is it, if tenant for term of life by his Deed confirm the eſtate of his Leſſee for years, To have and to hold to him and his heirs, or releaſe to his Leſſee and his heirs, yet the Leſſee for years hath an eſtate but for term of the life of the tenant for life, &c.

¶ *CAr tiels choſes que paſſont en tiels caſes de tenant en le taile, &c.* Here is rehearſed another antient maxim of the Common Law touching Grants, and hereby it appeareth that a Feoffment in Fee (although it be by parol) is of a greater operation and eſtimation in Law, than a grant of a reverſion by Deed though it be enrolled, and Attornment of the Leſſee for years of a releaſe, or a Confirmation by Deed, for the reaſons aforeſaid. And this is manifeſted by the examples which our Author here in theſe three Sections putteth.

Sect. 611.

¶ *FOrſque eſtate pur terme dans, &c.* Here it is implied, that albeit the feoffment made by Leſſee for years be a feoffment between the Feoffor and feoffee, and that by this feoffment the fee ſimple paſſeth by force of the Livery, yet is it a diſſeiſin to the Leſſor. And here it is worthy to be obſerved, that our Author ſaith, that Tenant for term of years may make a feoffment, whereupon it followeth, that the Feoffor may thereunto annex a warranty, whereupon the Feoffee may vouch him: but of this you ſhall read more in the Chapter of warranties, Sect. 698.

¶ MEs autrement eſt quant tenant a terme de vie fait un feoffemẽt en fee, car per tiel Feoffement le Fee ſimple paſſa. Car Tenant a terme dans puit faire feoffment in Fee, et per ſon Feoffment le fee ſimple paſſera, et uncore il navoit al tẽps del Feoffment fait forſque eſtate pur terme dans, &c.

BUt otherwiſe it is when tenant for life maketh a Feoffment in fee, for by ſuch a feoffment the fee ſimple paſſeth. For tenant for years may make a feoffment in fee, and by his feoffment the fee ſimple ſhall paſs, and yet he had at the time of the feoffment made but an eſtate for term of years, &c.

Sect. 612.

¶ ITem, ſi tenant en le taile granta ſon terre a un auter pur terme de vie de meſme le tenant en taile, & liver a luy ſeiſin, &c. & apres per ſon fait il releſſa a le tenant & a ſes heires tout le

ALſo, if tenant in tail grant his land to another for term of the life of the ſaid Tenant in tail, and deliver to him ſeiſin, &c. and after by his Deed he releaſeth to the Tenant and to his heirs all the

droit quel il avoit en meſme la terre, en ceſt cas leſtate del Tenant de la terre neſt pas enlarge per force de tiel releas, pur ceo que quant le Tenant avoit leſtate en le terre pur terme de vie de le Tenant en le Taile, donque il avoit tout le droit que le Tenant en le Taile puiſſoit droiturelment granter ou releſſer; iſſint que per tiel releas nul droit paſſa, entant que ſon droit fuit ale adevant.

right which he hath in the ſame Land, in this caſe the Eſtate of the Tenant of the Land is not enlarged by force of ſuch Releaſe, for that when the Tenant had the eſtate in the Land for terme of the Life of the Tenant in Taile, he had then all the right which Tenant in Taile could rightfully grant or releaſe. So as by this releaſe no right paſſeth, inaſmuch as his right was gone before.

Sect. 613.

¶ ITem, ſi Tenant en Taile per ſon fait grant a un auter tout ſon Eſtate que il avoit en les Tenements a luy tailes, a aver & tener tout ſon Eſtate al auter et a ſes Heires a touts jours, et delivera a luy ſeiſin accordant, en ceſt cas le Tenant a que lalienation fuit fait, nad auter eſtate forſque pur terme de vie del Tenant en taile & iſſint il poit bien eſtre prove, que le Tenant en taile ne poit pas graunter ne alener ne faire aſcun droiturel eſtate de franktenement a auter perſon, forſque pur terme de ſa vie demeſne, &c.

ALſo, if Tenant in Taile by his Deed grant to another all his Eſtate which he hath in the Tenements to him intail'd, To have and to hold all his Eſtate to the other, and to his Heires for ever, and deliver to him ſeiſin accordingly; in this caſe the Tenant to whom the alienation was made hath no other Eſtate but for the terme of the life of the Tenant in Taile. And ſo it may be well proved, that Tenant in Taile cannot grant, nor alien, nor make any rightful Eſtate of Freehold to another perſon, but for term of his life only, &c.

¶ The meaning of Littleton in both theſe caſes, in this and in the Section next preceding is, that having regard to the iſſue in taile, and to them in reverſion or remainder, tenant in taile cannot lawfully make a greater Eſtate than for term of his life; and therefore this Releaſe or Grant is no Diſcontinuance. But in regard of himſelf this Releaſe or Grant leaveth no reverſion in him, but puts the ſame in abeiance, ſo as after this Releaſe or Grant made he ſhall not have any action of waſte, &c.

¶ *Grant tout ſon Eſtate, Vide Sect.* 650. Action of waſte &c. there is implied that he ſhall not enter for a forfeiture, if after the releaſe or grant the Iſſue maketh a feoffment in fee. 13 H. 7. 16. 2. Brook Releaſe 95.

Sect. 614.

¶ CAr ſi jeo done Terre a un home en Taile, ſavant

FOr if I give land to a man in Taile, ſaving the reverſion to my

¶ HEre Littleton proveth, that the feoffee of Tenant in taile hath no rightful eſtate having

having reſpect to two perſons, the one is to the Lord, whoſe reverſion is diveſted and diſplaced, and the other to the Iſſue in taile, who is driven to his Action to recover his right.

¶ *A tort luy deforce.*

(n) Bract. l. 4. fol. 238. Flet. lib. 5. cap. 11.

(n) Deforciare is a word of Art, and cannot be expreſſed by any other word; for it ſignifieth, to withold lands or tenements from the right owner, in which caſe either the entrie of the right owner is taken away, or the Deforceor holdeth it ſo faſt, as the right owner is driven to his real Præcipe, wherein it is ſaid, Unde A. eum iniuſte deforceat, or the Deforceor ſo diſturbeth the right owner, as he cannot enjoy his own: and therefore it is ſaid, Per hoc autem quod dicitur in brevi ultimæ preſentationis deforceant, videtur quibuſdam, quod querens innuat per hoc quod deforceans ſit in ſeiſina, ſicut in brevi de recto, ſed revera non eſt ita; ſed ſatis deforceat qui poſſeſſorem uti ſeiſina non permiſerit omnino vel minus commode impediat preſentando, appellando, impetrando, ſecundum quod dicitur de diſſeiſitore, ſatis facit diſſeiſinam, qui uti non permiſit poſſeſſorem vel minus commode, licet omnino non expellat. In this caſe that Littleton putteth, the diſcontinue being in by wrong, is no Diſſeiſor, Abator, or Intruder, but a Deforceor; and hereof cometh Deforcement, and thus did Antiquity deſcribe it: (o) Deforcement, come ſi aſcun enter en auter tenement tout come le veray Seignior eſt al Market ou ailers, & retorne & ne poit aver entre eins, eſt celuy deforce & debotue. And for that at the firſt the withholding was with violence and force, it was called a Deforcement of Lands or Tenements; but now it is generally extended to all kind of wrongful withholding of Lands or Tenements from the right owner. There is a writ called a Quod ei deforceat, and lieth where Tenant in Tail, or Tenant for Life, loſeth by default, by the Statute he ſhall have a Quod ei deforceat againſt the Recoveror, and yet he cometh in by courſe of Law.

Bract. & Flet, ubi ſupra.

(o) Mir. cap. 2. Sect. 15.

Weſtm. 2. cap. 4.

A tort luy deforce.

(n) Deforciare eſt un word de Art, & cannot be expreſſe per nul other word; car il ſignifie, to withold lands ou tenements from the right owner, en which caſe either the entrie de le right owner eſt take away, ou le deforceor holdeth il ſi faſt, as le right owner eſt driven to his real Præcipe, wherein il eſt ſaid, Unde A. eum iniuſte deforceat, ou le Deforceor ſi diſturbeth le right owner, as il cannot enjoy his own: & therefore il eſt ſaid, Per hoc autem quod dicitur in brevi ultimæ preſentationis deforceant, videtur quibuſdam, quod querens innuat per hoc quod deforceans ſit in ſeiſina, ſicut in brevi de recto, ſed revera non eſt ita; ſed ſatis deforceat qui poſſeſſorem uti ſeiſina non permiſerit omnino vel minus commode impediat preſentando, appellando, impetrando, ſecundum quod dicitur de diſſeiſitore, ſatis facit diſſeiſinam, qui uti non permiſit poſſeſſorem vel minus commode, licet omnino non expellat. En this caſe que Littleton putteth, le diſcontinue being in by wrong, eſt no Diſſeiſor, Abator, ou Intruder, but a Deforceor; & hereof cometh Deforcement, & thus did Antiquity deſcribe it: (o) Deforcement, come ſi aſcun enter en auter tenement tout come le veray Seignior eſt al Market ou ailers, & retorne & ne poit aver entre eins, eſt celuy deforce & debotue. And for que at the firſt le withholding was with violence and force, il was called a Deforcement of Lands ou Tenements; but now il eſt generally extended to all kind of wrongful withholding of Lands ou Tenements from le right owner. There eſt a writ called a Quod ei deforceat, & lieth where Tenant in Tail, ou Tenant for Life, loſeth by default, by le Statute he ſhall have a Quod ei deforceat againſt le Recoveror, & yet he cometh in by courſe of Law.

(n) Deforciare is a word of Art, and cannot be expreſſed by any other word; for it ſignifieth, to withold lands or tenements from the right owner, in which caſe either the entrie of the right owner is taken away, or the Deforceor holdeth it ſo faſt, as the right owner is driven to his real Præcipe, wherein it is ſaid, Unde A. eum iniuſte deforceat, or the Deforceor ſo diſturbeth the right owner, as he cannot enjoy his own: and therefore it is ſaid, Per hoc autem quod dicitur in brevi ultimæ preſentationis deforceant, videtur quibuſdam, quod querens innuat per hoc quod deforceans ſit in ſeiſina, ſicut in brevi de recto, ſed revera non eſt ita; ſed ſatis deforceat qui poſſeſſorem uti ſeiſina non permiſerit omnino vel minus commode impediat preſentando, appellando, impetrando, ſecundum quod dicitur de diſſeiſitore, ſatis facit diſſeiſinam, qui uti non permiſit poſſeſſorem vel minus commode, licet omnino non expellat. In this caſe that Littleton putteth, the diſcontinue being in by wrong, is no Diſſeiſor, Abator, or Intruder, but a Deforceor; and hereof cometh Deforcement, and thus did Antiquity deſcribe it: (o) Deforcement, come ſi aſcun enter en auter tenement tout come le veray Seignior eſt al Market ou ailers, & retorne & ne poit aver entre eins, eſt celuy deforce & debotue. And for that at the firſt the withholding was with violence and force, it was called a Deforcement of Lands or Tenements; but now it is generally extended to all kind of wrongful withholding of Lands or Tenements from the right owner. There is a writ called a Quod ei deforceat, and lieth where Tenant in Tail, or Tenant for Life, loſeth by default, by the Statute he ſhall have a Quod ei deforceat againſt the Recoveror, and yet he cometh in by courſe of Law.

(o) Mir. cap. 2. Sect. 15.

Weſtm. 2. cap. 4.

*Sect.*615.

¶ ITem ſi terre ſoit leſſe a un home pur terme de ſa vie, le Remainder a un auter en le Taile, ſi celuy en le Remainder voile graunter ſon Remainder a un auter en fee per ſon fait, & le Tenant a terme de vie atturna, ceo neſt pas Diſcontinuance de le Remainder.

ALſo, if Land be let to a man for terme of his Life, the Remainder to another in Taile, If he in the Remainder will grant his Remainder to another in Fee by his Deed, and the Tenant for Life attorne, this is no Diſcontinuance of the Remainder.

Sect.

Sect. 616.

¶ ITem, ſi home ad Rent ſervice ou Rent charge en Tail, et il granta le dit Rent a un auter en fee, et le Tenant attorna, ceo neſt pas diſcontinuance, &c.

ALſo, if a man hath a rent ſervice, or Rent charge in tail, and he grant the ſaid Rent to another in Fee, and the Tenant attorn, this is no Diſcontinuance, *&c.*

Sect. 617.

¶ ITem, ſi home ſoit Tenant en tail, de un Advowſon en groſſe, ou de un Common en groſſe, il per ſon fait voile graunt ladvowſon, ou le Common a un auter en fee, ceo neſt pas diſcontinuance. Car en tiels cases les grauntees nont eſtate forſque pur terme de vie de le Tenant en taile que fiſt le Grant, &c.

ALſo, if a man be Tenant in Tail of an Advowſon in Groſs, or of a Common in Groſs, if he by his deed will Grant the Advowſon or Common to another in Fee, this is no Diſcontinuance; for in ſuch caſes the Grantees have no eſtate but for term of the life of Tenant in Tail that made the Grant, *&c.*

¶ BY the caſes in theſe three Sections it appeareth, That if a Remainder or a Rent ſervice, or Rent-charge, or an Advowſon, or a Common, or any other Inheritance that lieth in the Grant, be granted by Tenant in Tail, it is no Diſcontinuance, as formerly hath been ſaid.

(p) Note, here is an Advowſon named by Littleton, as a thing that lieth in Grant, and paſſeth not by Livery of Seiſin.

Brac. l.2. c.5. & f.389. 378. Bria. f.187. Mer. c.28. Sect. 17. Flet. l.3. ca.15. (p) 5 E.3.58.21 E.37. 38.43 E.3.1.b.13 H.6.4 5 H.7.37.18 H.8.16. Edit. Dyer 323.b.

Sect. 618.

¶ ET nota, q̄ de tiels choſes q̄ paſſont p̄ voy de grant per Fait fait en pays, et ſans livery, la tiel graunt ne fait pas diſcontinuance, come en les caſes avandits, & en auter caſes ſemblables, &c. et coment que tiels choſes ſont graunts en fee per fine levie & le Court

AND note, that of ſuch things as paſs by way of grant, by deed made in the Country, and without livery, there ſuch grant maketh no diſcontinuance, as in the caſes aforeſaid, and in other like caſes, *&c.* and albeit ſuch things be graunted in Fee, by Fine levied in the Kings Court, *&c.*

¶ HEre is the general reaſon yeelded of the preceedent caſes, and the like, for that it is a Maxim in Law, That a Grant (d) by deed of ſuch things as do lie in Grant, and not in Livery of Seiſin, do work no Diſcontinuance. But the particular reaſon is, for that of ſuch things the Grant of Tenant in Tail worketh no wrong, either to the Iſſue in Tail, or to him in reverſion or remainder; for nothing doth paſs but only during the life of Tenant in Tail, which is lawful, and every diſcontinuance worketh a wrong, as hath been ſaid.

(d) E.3.56.32 E.3. diſcont.2.31. Aſſ.8.4 H.7. 17.21 H.7.41.15 H.7. 19.21 H.6.32,53.3 E.4. 3.21 E.4.5.22 E.2. Diſcont.56.38 H.8. Diſcont.55. Brook. 19. E.3. Bre.468. Pl. Com. 435.18. Aſſ. p.2.

(q) If

(q)33 E.3. Formedon 47.13 H.7.10.36. Aſſ.8. 4 H. 7.17.

(q) If Tenant in Tail of a Rent ſervice, &c. or of a Reverſion, or remainder in Tail, &c. grant the ſame in fee with warranty, and leaveth Aſſets le Roy, &c. uncore ceo nè fait diſcontinuance, &c. yet this maketh not a Diſcontinuance, &c. in fee ſimple, and dieth; this is neither bar nor diſcontinuance to the iſſue in tail, but he may diſtrain for the rent or ſervice, or enter into the land after the deceaſe of Tenant for life. But if the Iſſue bringeth a Formedon in the Deſcender, and admit himſelf out of poſſeſſion, then ſhall he be barred by the warranty and Aſſets.

(r)3 H.7.12.

9 E.4.22.

(r) Tenant in Tail of a rent diſſeiſeth the tenant of the Land, and maketh a Feoffment in fee with warranty, and dieth; this is no diſcontinuance of Rent, but the Iſſue may diſtrain for the ſame, albeit the warranty extend to the rent, yet by the rule of Littleton it lieth not in diſcontinuance; and where the thing doth lie in Livery, as Lands and Tenements, yet if to the conveyance of the Freehold or Inheritance no livery of Seiſin is requiſite, it worketh no diſcontinuance. (ſ) As if Tenant in tail exchange Lands, &c. or if the King being Tenant in tail Grant by his Letters Patents the lands in Fee, there is no Diſcontinuance wrought.

(ſ)38 H.8.pat.Br.101. Pl.Com.233.Li.1. f.26. Alton Woods caſe.

¶ *Per Fine.* Of a thing that lieth in Grant, though it be granted by fine, yet it worketh no diſcontinuance; and this is regularly true.

48 E.3.23.

(t)15 E.4.tit.diſcont. 30.6 E.56,57.

(t) If tenant in tail make a leaſe for years of lands, and after levie a Fine; this is a Diſcontinuance, for a Fine is a feoffment of Record, and a Freehold paſſeth. But if tenant in tail maketh a Leaſe for his own life, and after levie a Fine, this is no Diſcontinuance, becauſe the Reverſion expectant upon a ſtate of Freehold which lieth only in Grant, paſſeth thereby.

Sect. 619.

¶ * Nota, ſi jeo done terre a un auter en taile, & il leſſa meſme la terre a un auter p̄ terme dans, & puis le Leſſor graunta le reverſion a un auter en fee, & le tenant a terme dans atturna al Grantee, et le terme eſt expire durant la vie le tenant en taile per que le Grantee enter, et puis le tenant en taile ad iſſue et devie, en ceſt caſe ceo neſt diſcontinuance, nient obſtant que le Grant ſoit execute en la vie le Tenant en taile, pur ceo que al temps de Leaſe fait a terme dans, nul novel Fee ſimple fuit reſerve en le Leſſor, eins le Reverſion demurt a luy en Tail, ſicome il fuit devant le Leaſe fait. *

Note, if I give Land to another in tail, and he letteth the ſame Land to another for term of years, and after the Leſſor granteth the reverſion to another in fee, and the Tenant for years attorn to the grantee, and the term expireth during the life of the tenant in tail, by the which the Grantee enter, and after the tenant in tail hath Iſſue and die: in this caſe this is no Diſcontinuance, notwithſtanding the Grant be executed in the life of the Tenant in tail, for that at the time of the Leaſe made for years, no new Fee-ſimple was reſerved in the Leſſor, but the Reverſion remained to him in tail, as it was before the Leaſe made.

¶ * This is added to Littleton, and not in the original, and therefore I purpoſely omit it: Yet is the caſe good in Law, becauſe neither the Leaſe for years, nor the grant of the Reverſion diveſteth any Eſtate.

Sect.

Sect. 620.

¶ Mes si le tenant en tail fait leas a terme de vie le lessee, &c. en ceſt caſe le tenant en le Taile ad fait un novel reversion de fee simple en luy, pur ceo que quant il fist leas p terme de vie, &c. il discontinua le taile, &c. p force de mesme le leas, & aury il discontinua ma Reversion, &c. & il covient que la Reversion de fee simple soit en aſcun person en tiel cas, et il ne poit estre en moy que sue Donor, entant q̄ mon Reversion est discontinue. Ergo il covient que la Reversiō de fee soit en le Tenant en le Taile, que discontinua ma reversion per tiel leas, &c. Et si en ceſt caſe le Tenant en le Taile grauntā per son fait ceſt Reversion en fee a un auter, & le Tenant a terme de vie attorna, &c. & puis le Tenant a term̄ de vie mort, uvant l' Tenant en le Taile, & le grantee de le Reversion entra, &c. en la vie le tenant en le Taile, donq̄ ceo est un Discontinuance en fee, & si apres le Tenant en le taile morust, son issue ne poit enter, mes est mis a son br̄ de Formedon.

But if the Tenant in tail make a leaſe for terme of the life of the Leſſee, &c. In this caſe the Tenant in Taile hath made a new Reverſion of the fee ſimple in him, becauſe when he made the Leaſe for life, &c. he diſcontinued the Taile, &c. by force of the ſame Leaſe, and alſo he diſcontinued my Reverſion, &c. And it behoveth that the Reverſion of the fee ſimple be in ſome perſon in ſuch caſe. And it cannot be in me which am the Donor, inaſmuch as my Reverſion is diſcontinued, *Ergo* the Reverſion of the fee ought to be in the tenant in Taile, who diſcontinued my Reverſion by Leaſe, &c. And if in this caſe the Tenant in taile grant by his Deed this Reverſion in fee to another, and the Tenant for life attorn, &c. and after the Tenant for life dieth, living the Tenant in Tail, and the grantee of the Reverſion enter, &c. in the life of the Tenant in Taile, then this is a diſcontinuance in fee; and if after the Tenant in taile dieth, his iſſue may not enter, but is put to his Writ of *Formedon*.

¶ *Pur term de vie del Iessee, &c.* Here is implied, or for term of another mans life.

¶ *Novel Reversion de fee simple,* which muſt be underſtood of a fee ſimple determinable upon the life of the Leſſe, which our Author here calleth a fee ſimple; for if the Leſſee dieth, the Donor is Tenant in Taile again, as he was before; and that is the reaſon that if in that caſe he granteth over the Reverſion and dieth, and after the death of tenant in taile the leſſee dieth, the entry of the iſſue is lawfull, becauſe by the death of the Leſſe the Diſcontinuance is determined, and conſequently the grant made of the reverſion gained upon that diſcontinuance is void alſo. 15 E. 4. Tit. Diſcont. 30.

A tenant in tail maketh a leaſe for three lives according to the Statute of 32 H. 8. that is no Diſcontinuance of the Eſtate tail, or of the Reverſion, becauſe it is authorized by Act of Parliament, wherevnto every man is judgment of Law is party. 32 H. 8. cap. 28.

And yet in ſome caſes the freehold may be diſcontinued, and not the Reverſion. (u) As if the husband and wife make a leaſe for life by Deed of the wifes Land reſerving a rent, the husband dieth, this was a Diſcontinuance at the Common Law, for life and yet the Reverſion was not diſcontinued, but remained in the wife. Otherwiſe it is (u) 38 E. 3. 32. 18 Aſſ. 12 18 E. 3. 54. 22 H. 6. 34.

if the husband had made the leaſe alone.

21 H. 6. 52. 15 E.4. tit. Diſcont. 30.

¶ *Et puis le tenant a terme de vie moruſt, &c.* The like Law it is if the tenant for life ſurrender to the grantee, or if the grantee recover in an action of waſte, or enter for the forfeiture.

32 E.3 Diſcont. 7. 43 E.3. Entr. Cong 31. 3 H.4.9. 22 E.2. diſcon. 50. 34. Aſſ.6. Pl.4.38. Aſſ.5.P.6. 43 Aſſ.6.48. 28 E.1.43. 41 H. 6. 51. 25 E.4. Tit. Diſcontinuance. 30 Brook tit. Diſcont. 3. & 14.4 H.7.17. 21 H. 7. 11.

¶ *A avoit ſeiſin & execution.* And here it is to be obſerved, that when the reverſion in this caſe is executed in the life of Tenant in taile, it is equivalent in judgment of Law to a freoffment in fee, for the ſtate for life paſſed by livery

(x) 22 H.6.52,53.

(x) If tenant in taile make a leaſe for life, the remainder in fee, this is an abſolute Diſcontinuance, albeit the remainder be not executed in the life of tenant in taile, becauſe all is one eſtate, and paſſeth by one livery. And ſo note a diverſity between a grant of a reverſion, and a limitation of a remainder, B. Tenant in tail, maketh a gift in tail, to A. and after B. releaſeth to A. and his heirs, and after A dieth without iſſue, the iſſue of the firſt Donee may enter upon the collateral heir, becauſe A. had no ſeiſin and execution of the reverſion of the land in his demeſne as of fee, as Littleton here ſpeaketh. But if tenant in tail make a leaſe for the life of the Leſſee, and after releaſeth to him and his heirs; this is an abſolute Diſcontinuance, becauſe the fee ſimple is executed in the life of tenant in taile.

(y) 34 E. 1. Quære Impedit 179. 21 E. 3. Quare Imp. 196. 23 Aſſ.8. 50 E. 3. 26.

(y) If tenant in taile of a Mano^r whereunto an Advowſon is appendant maketh a freoffment in fee by deed (as it ought to be) of one Acre with the advowſon, and the Church becometh void, and the freoffee preſent, tenant in taile dieth, the Church becometh void, the iſſue ſhall not preſent until he hath recontinued the Acre. But if the freoffee had not executed the ſame by preſentment, then the iſſue in taile ſhould have preſented. And ſo was it at the Common Law of the husband ſeiſed in the right of his wife, mutatis mutandis.

36 Aſſ.8. 42 E.3.20. 22 R. 2. Diſcont. 50.

If a fine be levied to a tenant in taile, and he granteth and rendreth the land to him and his heirs, and die before execution, this is no Diſcontinuance. Otherwiſe it is, if it had ben executed in the Life of Tenant in tail.

21 H.6.52,53. Brook, tit. Diſcont. 3. 21 H.7.11. Lib.1.fo.85. Lib.10.fol.96,97.

If tenant in taile make a leaſe for life of the Leſſee, and after grant the reverſion with warranty, and dieth before execution, this is no Diſcontinuance, becauſe the Diſcontinuance was (as hath been ſaid) but for life, and the warranty cannot enlarge the ſame.

(*) 15 E.4. Diſcont. 30 Vide Sect. 641.

¶ *Et ceo eſt per force del grant de meſme le tenant en taile.* Hereupon Littleton himſelf is of the ſame opinion, (*) as it appeareth he was in our Books, that if Tenant in taile make a leaſe for life, and grant the Reverſion in fee, and the leſſee attorn, and that Grantee granteth it over, and the leſſee attorn, and then the leſſee for life dieth, ſo as the reverſion is executed in the life of tenant in taile; yet this is no Diſcontinuance, but that after the death of Tenant in tail the iſſue may enter, becauſe (as Littleton here ſaith) he is not in of the grant of the Tenant in taile, but of his Grantee.

If at this day tenant in taile make a leaſe for life, and after by Deed indented and inrolled according to the Statute he bargaineth and ſelleth the reverſion to another in fee, and the leſſee dieth, ſo as the reverſion is executed in the life of Tenant in taile, albeit the bargainee is not in the Per by the tenant in tail, yet inaſmuch as he claimeth the Reverſion immediately from him, which is executed in his life time, this is a Diſcontinuance. And ſo it is, and for the ſame cauſe, if Tenant in tail maketh a leaſe for life, and after diſſeiſeth the Leſſee for life, and maketh a freoffment in fee, the Leſſee dieth, and then tenant in tail dieth, albeit the fee be executed, yet for that the fee was not executed by lawful means (as in all the Caſes of Littleton it appeareth it ought to be) it is no Diſcontinuance.

don. Et la cauſe eſt, pur ceo q̄ ceſtuy que avoit l' grant de tiel reverſion in fee Simple, avoit le ſeiſin & execution de meſmes les terres ou tenements, daver a luy & a ſes heires en ſon demeſne come de fee, en la vie l' tenant en tail, & ceo eſt per force de grant de meſme le tenant en tail.

And the cauſe is, for that he which hath the grant of ſuch reverſion in fee ſimple hath the ſeiſin and execution of the ſame lands or tenements to have to him & to his heirs in his demeſne as of fee in the life of the tenant in tail, and this is by force of the grant of the ſaid Tenant in taile.

Sect.

Sect. 621.

¶ En meſme le manner ſerra, ſi en le caſe avantdit, le tenant a terme de vie apres lattournement al grantée uſt alien en fée, & le grantée uſt enter pur forfeiture de ſon eſtate, & puis le tenant en taile uſt debie, ceſt un Diſcontinuance, Cauſa que ſupra. ¶

IN the ſame manner ſhall it be, if in the caſe aforeſaid the Tenant for term of life after the Attornment to the grantee had aliened in fee, and the grantee had entred by forfeiture of his Eſtate, and after the Tenant in taile had died; this is a Diſcontinuance, *Cauſa qua ſupra.* ¶

¶ This is added in this place, but in the Original it cometh in after in this Chapter. 21 H. 6. 32, 33. 15 E. 4. Diſcont. 30.

Sect. 622.

¶ Mes en ceſt caſe, ſi tenant en taile que granta le reverſion, &c. morust, vivant le Tenant a terme de vie & puis le tenant a terme de vie morust, & puis celuy a que le reverſion fuit graunt enter, &c. donques ceo neſt pas diſcontinuance, mes que liſſue del Tenant en taile poit bien enter ſur le grauntée del Reverſion, pur ceo que le Reverſion que le Grauntée avoit, &c. ne fuit executé, &c. en le vie le Tenant en Taile, &c. Et iſſint il eſt graund diverſity quant tenant en taile fait un leas pur terme dans, & lou il fait leas pur terme de vie, car en lun cas il ad Reverſion en taile, & en lauter cas il ad un Reverſion en fée.

BUt in this caſe, if tenant in taile that grants the Reverſion, &c. dieth, living the Tenant for life, and after the Tenant for life dieth, and after he to whom the Reverſion was granted enter, &c. then this is no Diſcontinuance, but that the iſſue of the Tenant in Taile may well enter upon the Grantee of the Reverſion, becauſe the Reverſion which the Grantee held, &c. was not executed, &c. in the life of the Tenant in Taile, &c. And ſo there is a great diverſity when Tenant in Taile maketh a Leaſe for years, and where he maketh a Leaſe for life; for in the one caſe he hath a Reverſion in taile, and in the other caſe he hath a Reverſion in fee.

¶ Of this ſufficient hath been ſaid before, and is of it ſelf manifeſt, and needeth no explication. 15 E. 4. 6. 21 H. 6. 55.

¶ The Law was at the Common law, of a husband ſeiſed of land in right of his wife, Mutatis mutandis.

Sect.

Sect. 623.

¶ CAr ſi terre ſoit done a un home & a ſes heires males de ſon corps engendres, le quel ad iſſue deux fits, & leigne fits ad iſſue file & devie, & le tenant en taile fait un leas pur terme des ans, & devie, ore le Reverſion diſcendiſt a le fits puiſne, pur ceo que le Reverſion fuit lors que en le taile, & le fits puiſne eſt Heire male, &c. Mes ſi le Tenant uſt fait un leas pur terme de vie, &c. & puis morust, ore le Reverſion diſcendiſt a le file de leigne fits, pur ceo que le Reverſion eſt en fee ſimple, & la file eſt Heire general, &c.

FOr if Land be given to a man and to his Heires Males of his body engendred, who hath iſſue two ſonnes, and the eldeſt ſonne hath iſſue a daughter and dieth, and the Tenant in Taile maketh a leaſe for years and die; now the Reverſion deſcendeth to the younger ſon, for that the Reverſion was but in the Taile, and the youngeſt ſonne is Heire male, &c. But if the Tenant had made a leaſe for life, &c. & after died now the Reverſion deſcendeth to the daughter of the elder brother, for that the Reverſion is in the fee ſimple, and the daughter is heir general, &c.

This is evident alſo, and needeth no explanation.

Sect. 624.

6 E. 4. 21. 20 H. 6. 14. Vide 18 E. 3. 8.

¶ ITem, ſi home ſoit ſeiſie en Taile de terres deviſables per Teſtament, &c. & ſi ceo deviſa a un auter en fee, & morust, & lauter enter, &c. ceo neſt pas diſcontinuance, pur ceo que nul diſcontinuance fuit fait en la vie del Tenant en le Taile, &c.

ALſo, if a man be ſeiſed in Taile of Lands deviſable by Teſtament, &c. and he deviſeth this to another in fee, and dieth, and the other enter, &c. this is no Diſcontinuance, for that no Diſcontinuance was made in the life of the Tenant in Taile, &c.

¶ This is manifeſt, and needeth no explanation: Only this is to be obſerved, that no Diſcontinuance can be made by Tenant in Tail, but ſuch as is made, and taketh effect in his life time, which is here implied in the (&c.)

Sect. 625.

(a) 9 E. 4. 24. b.

AND of this opinion is Littleton (a) in our Books, and ſaith that ſo it was adjudged.

Lib. 1. fol. 140, in Chudleys caſe.

¶ *Enfeoffe le donor, &c.* This muſt be underſtood where the Reverſion of the donor is immediately ex-

¶ ITem, ſi terr ſoit done en taile, ſavant le Reverſion al Donor, & puis l'Tenant en Taile per ſon fait enfeoffa l'Donor

ALſo, if Land be given in Taile, ſaving the Reverſion to the Donor, and after the Tenant in Taile by his Deed enfeoffe the Do-

a

a aver et tener a luy et a ſes heires a touts jours, et liver a luy ſeiſin accordant, &c. ceo neſt pas diſcontinuance, pur ceo que nul poit diſcontinuer leſtate en le taile, ſi non q̄ il diſcontinue le reverſion celuy que ad le reverſion, &c. ou le remainder, ſi aſcun ad le remainder, &c. et entant que per tiel feoffment fait a le donor (le reverſion adonque eſtant en luy) ſon reverſion ne fuit diſcontinue ne alterate, &c. ceſt feoffment neſt pas diſcontinuance, &c.

nor. To have and to hold to him and to his heirs for ever, and deliver to him ſeiſin accordingly, *&c.* this is no diſcontinuance, becauſe none can diſcontinue the Eſtate Tail, unleſs he diſcontinueth the Reverſion of him who hath the Reverſion, *&c.* or remainder if any hath the remainder, *&c.* and in as much as by ſuch feoffment made to the Donor (the Reverſion then being in him) his reverſion was not diſcontinued nor altered, *&c.* this feoffment is no Diſcontinuance, *&c.*

pectant upon the eſtate of the Donee, (b) for if a man make a gift in tail the remainder in tail, reſerving the reverſion to himſelf: In this caſe if the Donee enfeoffe the Donor, this is a diſcontinuance, becauſe there is a mean eſtate, and ſo doth Littleton here put his caſe of a reverſion immediately expectant upon the gift in tail. Alſo it is to be intended of a feoffment made to the Donor ſolely or only, for if the Donee enfeoffe the Donor and a ſtranger, that is a diſcontinuance of the whole land. (b) 41. Aſſ. 2. 42 E. 3. 2. 28 H. 6. Dyer 12.

But if tenant for life make a leaſe for his own life to the leſſor, the remainder to the leſſor and an eſtranger in fee, in this caſe for as much as the limitation of the Fee ſhould work the wrong, it enureth to the Leſſor as a ſurrender for the one moiety, and a forfeiture as to the remainder of the ſtranger; for he cannot give to the Leſſor that which he had before, as our Author here ſaith; and as to the remainder to the ſtranger, it is a forfeiture for this moiety, and when the Leſſor entreth he ſhall take the benefit of it. But if two joyntenants be, and one of them enfeoffe his companion and a ſtranger, and make Livery to the ſtranger; this ſhall veſt only in the ſtranger, becauſe the livery cannot enure to his Companion.

¶ *Nul poit diſcontinuer leſtate en taile, ſi non que il diſcontinue le reverſion, &c. ou le remainder*, &c. And therefore for this cauſe if the reverſion or remainder be in the King, the Tenant in tail cannot diſcontinue the eſtate tail. (c) But Tenant in tail, the reverſion in the King, might have barred the eſtate tail by a common recovery, until the Statute of 34 H. 8. ca. 20. which reſtraineth ſuch a tenant in tail, but that common recovery neither barred nor diſcontinued the Kings reverſion. 40. Aſſ. 36. 21 Aſſ. 36. 18 E. 3. 45. F. N. B. 142. a. Pl. Com. 555. (c) 33 H. 8. tit. Tail, Br. 41. Pl. Com. ubi ſupra.

Note, the reverſion may be reveſted, and yet the diſcontinuance remain. (d) As if a Feme Covert be tenant for life, and the husband make a Feoffment in fee, and the Leſſor enter for the forfeiture; here is the reverſion reveſted, and yet the diſcontinuance remained at the Common Law. (d) 17. Aſſ. p. 60 39. Aſſ. 41. 11. Aſſ. 11. 16. Aſſ. 11. 18 E. 3. 45.

Sect 626.

EN meſme le manner eſt lou terres ſont dones a un hõe en taile, le remainder a un auter en fee, et le tenant en taile enfeoffa celuy que eſt en le remainder, a aver & tener a luy, et a ſes heires, ceo neſt pas diſcontinuance, Cauſa qua ſupra.

IN the ſame manner is it, where Lands are given to a man in tail, the remainder to another in fee, and the Tenant in tail infeoffe him that is in the remainder, To have and to hold to him and to his heirs, this is no diſcontinuance, *Cauſa qua ſupra.*

¶ *LE remainder a un auter.* Here it appeareth that (as hath been ſaid in caſe of a reverſion) the remainder muſt be immediately expectant upon the eſtate tail.

Sect.

Sect. 627.

¶ ITem, ſi un Abbe ad un Reverſion ou Rent ſervice, ou Rent charge, et voile graunter cel reverſion, ou Rent ſervice, ou Rent charge a un auter en fee, & le tenant atturna, &c. ceo neſt pas diſcontinuance.

ALſo, if an Abbot hath a reverſion, or a Rent ſervice, or a rent charge, and he will grant this reverſion, or rent ſervice, or rent charge to another in Fee, and the Tenant attorn, *&c.* this is no diſcontinuance.

Of Inheritances that lie in Grants, ſufficient hath been ſaid before.

Sect. 628.

¶ EN meſme le manner, lou Abbe eſt ſeiſie dun Advowſon, ou de tielx choſes que paſſont per voy de grant ſans liverie de ſeiſin, &c.

IN the ſame manner, where an Abbot is ſeiſed of an Advowſon, or of ſuch things which paſs by way of Grant without livery of ſeiſin, *&c.*

¶ HEre it appeareth (as hath been ſaid) That an Advowſon doth not lie in Livery, but in Grant.

Sect. 629.

¶ ITem, ſi Tenant en Taile leſſa ſa terre a un auter pur terme de vie, & puis il graunta en fee le Reverſion a un auter, et l'tenant atturna, & puis le tenant a terme de vie aliena en fee, & le grantee de reverſion enter, &c. en le vie le Tenant en le Taile, et puis le Tenant en le Taile Moruſt, ſon Iſſue ne poit enter, mes eſt mis a ſon Briefe de Formedon, pur ceo que le Reverſion en Fee ſimple que le grauntor avoit per le grant del Tenant en le Taile fuit executo en le vie de meſme le Tenant en le Taile, et pur ceo eſt un diſcontinuance en fee, &c.

ALſo, if Tenant in Tail letteth his Land to another for life, and after he granteth in fee the Reverſion to another, and the Tenant attorn, and after the Tenant for life alien in Fee, and the Grantee of the Reverſion enter, *&c.* in the life of Tenant in Tail, and after the Tenant in Tail dieth, his Iſſue ſhall not enter, but is put to his Writ of *Formedon*, becauſe the Reverſion in Fee ſimple which the Grantor had by the Grant of the Tenant in Tail, was executed in the life of the ſame Tenant in tail, and therefore it is a diſcontinuance in fee, *&c.*

Of this ſufficient hath been ſaid before.

Sect.

Sect. 630.

ET nota, que aſcuns font Diſcontinuances pur terme de vie. Sicome Tenant en le taile fait un Leaſe pur terme de vie, ſavant le reverſion a luy, auxy longement que le reverſion eſt al Tenant en taile, ou a ſes Heires, ceo neſt Diſcontinuance, forſque durant la vie le tenant a terme de vie, &c. Et ſi tiel Tenant en taile dona les Tenements a un auter en taile, ſavant le reverſion, donques ceo eſt Diſcontinuance durant le ſecond taile, &c.

AND note, that ſome make Diſcontinuances for terme of of life. As if Tenant in taile make a leaſe for life, ſaving the Reverſion to him, as long as the Reverſion is to the Tenant in Taile or to his Heires: this is no Diſcontinuance but during the life of Tenant for life, &c. And if ſuch Tenant in Taile giveth the Lands to another in Taile, ſaving the Reverſion, then this is a Diſcontinuance during the ſecond Taile, &c.

THis is manifeſt, and hath been handled before, and needeth no explanation, only this is to be obſerved, where Littleton putteth hereafter caſes of Diſcontinuances by Feoffment, &c. he hath a double intendment: Firſt, by Feoffment or by any other Conveiance which may make a Diſcontinuance, Secondly, &c. implyeth a Diſcontinuance by a gift in Taile, or a Leaſe for Life, &c.

Sect. 631.

MEs iou te tenant en taile fait un leaſe pur terme dans, ou pur terme de vie, le remainder a un auter en fee, & deliver liverie de ſeiſin accordant; ceo eſt Diſcontinuance en fee, pur ceo que le Fee ſimple paſſa per force de liverie de ſeiſin, &c.

BUt where the Tenant in Taile maketh a Leaſe for years or for life, the remainder to another in Fee, and delivereth Livery of Seiſin accordingly; this is a Diſcontinuance in fee, for that the fee ſimple paſſeth by force of the Livery of Seiſin, &c.

This is evident alſo, and herein ſufficient hath been ſpoken before.

Sect. 632.

ET eſt aſcavoir, que aſcuns tiels Diſcontinuances ſont fait ſur condition, &c. et pur ceo que les conditions ſont enfreints, &c. ou pur

AND it is to be underſtood, That ſome ſuch diſcontinuances are made upon Condition, &c. and for that the Conditions be broken, &c. or for

Diſcontinuances fait ſur condition, &c. Here is to be underſtood a diverſity between a condition in deed, whereof Littleton here ſpeaketh, and a Condition in Law, whereof ſomewhat hath been ſaid before in ſome chapters, viz.

viz. where the feme is tenant for life, & the husband maketh a feoffment in fee, and the Lessor entreth for the Condition in Law.

¶ *Conditions ſont enfrients, &c.* Here is implied, or any cause given either by disability of the feoffees, or by any condition performed on the part of the feoffor, or otherwise whereby the estate is in any sort avoided.

¶ *Come ſi le Baron ſoit ſeiſie de certaine terre en droit ſa feme, &c.* Here it appeareth, That for the Condition broken the heir of the husband may enter; for albeit no right descend from the husband to his heir, yet the title of entry by force of the Condition which the husband created upon the feoffment, and reserved to him & his heirs, doth descend to his heir; and Littleton saith truly, That so it hath been adjudged.

4 H. 6. 2. 9 H. 7. 24. b. Lib. 8. fol. 43, 44. Whittinghams case.

¶ *Sur le heire*, Nota, when the heir in this case hath entred for the condition broken, and hath avoided the feoffment, the estate of the heir vanisheth away, and presently the estate vesteth in the Feme or her heirs, without any entry or claim by her or them; for the heir entreth in respect of the condition, upon the real contract, and not of any right, as hath been said; and if the husband himself had re-entred, the estate had vested in his wife. And therefore where Littleton and our Books say, That the wife shall enter upon the heir; the meaning is, that after the Re-entry of the Heire she may enter.

Whittinghams case, ubi supra.

auters causes, solonque le course de la ley tiels estates ſont defeates, donques ſont les Diſcontinuances defeates, & ne tollent aſcun home per force de eux, de ſon entrie, &c. Come ſi le Baron ſoit ſeiſie de certe tre en droit ſa feme, & fait Feoffment en fee ſur Condition, & devie, ſi le Peire apres enter ſur le feoffee pur le Condition enfreint, lentrie la Feme eſt congeable ſur le heire, pur ceo que per lentre del heire le Diſcontinuance eſt defeat, come eſt adjudge.

other causes, according to the course of Law, such estates are defeated, then are the Diſcontinuances defeated, and ſhall not by force of them take any man from his entrie, &c. As if the husband be ſeiſed of certain land in right of his wife, and maketh a feoffment in fee upon condition, and dieth, if the heir after enter upon the feoffee for the condition broken the entry of the wife was congeable upon the Heir, for that by the Entry of the Heir the Diſcontinuance is defeated, as is adjudged.

Sect. 633.

Whittinghams case, ubi supra.

¶ The reason here rendred by Littleton, is, for that the husband cannot enter in his own right, but in the right of his wife; and the heir of the husband cannot enter, for no right or title deſcends unto him, & the wife in this case ſhall take benefit of the nonage of her husband, & enter into the land

If an infant be Tenant for another mans life, and make a feoffment in fee, and Ceſty que vie dieth the infant himſelf ſhall not enter because he hath no right at all.

¶ Item, ſi Feme Inheritrix q̄ ad un Baron, quel Baron eſt deins age, & il eſteant deins age fait un feoffment de les Tenements ſon Feme en Fee, & moruſt, ſi ad eſte queſtion, ſi la feme point enter, ou non, &c. Et ſi ſemble a aſcuns, que lentry la

ALſo, if a Woman Inheritrix hath a husband who is within age, and he being within age maketh a Feoffment of the Tenements of his wife in Fee, and dieth, it hath been a queſtion, if the Wife may enter or not, &c. And it ſeemeth to ſome, that the

Feme

Feme apres la mort sa baron, est congeable en cest cas. Car quant sa baron feasoit tiel feoffment, &c. il puissoit bien enter, nient contristeant tiel feoffment, &c. durant la coverture, & il ne puissoit enter en son droit demesne, mes en le droit la feme. Ergo tiel droit que il avoit derrer en droit sa feme &c. cest droit dentrer demurt al feme apres son decease.

entry of the wife after the death of their Husband is congeable in this case. For when her husband made such feoffment, &c. he might well enter notwithstanding such feoffment, &c. during the coverture, and he could not enter in his own right, but in the right of his wife, *Ergo* such right as he had to enter in the right of his wife, &c. this right of entrie remaineth to the wife after his decease.

If the husband within age rashly to wast feme tenant in taile general, and the husband make a gift in tail, and dieth within age, in this case the wife may enter, as Littleton here holdeth; or the heir of the husband in respect of the new reversion descended unto him may enter. But if the heir enter, presently reverts upon his estate vanisheth. If tenant in Taile being within the age of one and twenty years make a feoffment in fee, and after is attainted of felony and dieth, the entry of the issue is not lawful, for his entry is not lawful in respect of the estate only, but of his blood also which is corrupted, & therefore in that case he is vtterly barred of his remedie.

If husband and wife be both within age, and they be Dos intended joyn in a feoffment reserving a rent, the husband dieth, the wife may entry, or have a Dum fuit infra ætatem. But if she were of full age, she shall not have a Dum fuit infra ætatem, for the nonage of her husband, albeit they be but one person in Law. 14 E. 4. Bre. 283. 14 E. 3. Dum fuit infra ætatem 6. F. N. B. 192.

Sect. 634.

¶ ET il y ad ée dit, que si deux joyntenants esteants deins age, font un feoffment en fee, & lun des enfants devy, & lauter survesquist, entant q̄ les ambideux enfants puissant ent joyntment en lour vies, tel droit accrusist tout a luy que survesquist, & pur ceo celuy q̄ survesquist poit enter en lentiertie, &c. Et auxy lheire le baron que fist le feoffment deins age ne poit enter, &c. pur ceo que nul droit discendist a tiel heire en le cas avantdit, pur ceo que le baron naveit unques riens forq̄ in droit de sa feme, &c.

AND it hath been said, that if two joyntenants being within age make a feoffment in fee, and one of the infants die, and the other surviveth, inasmuch as both the infants might enter joyntly in their lives, this right accrueth all to him which surviveth, and therefore he that surviveth may enter into the whole, *&c.* And also the heire of the husband which made the feoffment within age cannot enter, &c. because no right descendeth to such heire in the case aforesaid, for that the husband had never any thing but in right of his wife, &c.

¶ *Poit enter en lentierie*, &c. And the reason hereof is implied in this (viz.) that they may joyn in a writ of Right, and therefore the right shall survive. But they cannot joyn in a Dum fuit infra ætatem, because the nonage of the one is not the nonage 21 E. 3. 30. 28 E. 1. Bar. 231. 6 E. 3. 249 H. 6. 6. 19 H. 6. 6. 39 H. 6. 42, 34 H. 8. 31. F. N. B. 192.

nonage of the other. In this caſe, if one Joyntenant had made a feoffment in fee and died, the right ſhould not have ſurvived, for the Joynture was ſevered for a time. If two Joyntenants be, and the one is of full age, and the other within age, and both they make a feoffment in fee, and he of full age dieth, the infant ſhall enter, or have a Dum fuit infra ætatem, but for the moiette.

See of this in the Chapter of Joyntenants.

Sect. 635.

¶ ET auxy quand un enfant fait un feoffment eſteant deins age, ceo ne luy grievera ne ledra, mes que il poit enter bien, &c. car ceo ſerroit encounter reaſon. que tiel feoffment fait per celuy que ne fuit able de faire tiel feoffment, grievera ou ledera auter, de toller eux de lour entre, &c. Et pur ceux cauſes il ſemble a aſcuns, que apres la mort de tiel baron iſſint eſteant deins age al temps de le feoffment, &c. que ſa feme bien poit enter, &c.

AND alſo when an infant makes a feoffment being within age, this ſhall neither grieve nor hurt him, but that he may well enter, *&c.* for it ſhould be againſt reaſon that ſuch feoffment made by him that was not able to make ſuch a feoffment, ſhall grieve or hurt another to take them from their entry, *&c.* And for theſe reaſons it ſeemeth to ſome, that after the death of ſuch husband ſo being within age at the time of the feoffment, *&c.* that his wife may well enter, *&c.*

Bract. fol. 14. Britton, fol. 88. 1. Fleta, lib. 3. cap. 3.

¶ *Mes que il poit enter bien*, &c. Here is implied, that he might enter either within age, or at any time after full age, and likewiſe after his death his heir may enter. Meliorem enim conditionem facere poteſt minor, deteriorem nequaquam.

Nota, A ſpecial heir ſhall take advantage of the infancy of the Anceſtor. As if tenant in taile of an acre of the cuſtome of Borough English make a feoffment in fee within age, and dieth, the youngeſt ſon ſhall avoid it, for he is privy in blood, and claimeth by diſcent from the infant.

And ſo, if Tenant in tail to him and the heirs females of his body, make a feoffment in fee, and dieth within age, having iſſue a Son and a Daughter, the Daughter ſhall avoid the feoffment. And ſo note, that a cauſe to enter by reaſon of Infancy is not like to Conditions, Warranties and Eſtoppels, which ever deſcend to the heire at the Common Law.

The reſidue of this Section upon that which hath been ſaid is evident.

Sect. 636.

Surrender. Surſum redditio properly is a yielding up of an eſtate for life or years to him that hath an immediate eſtate in reverſion or remainder, wherein the Eſtate for life or years may drown by mutual agreement between them.

¶ ITem, ſi feme enheritrix prent baron, & ont iſſue fits, et l' baron mozuſt, & el prent auter baron, & le ſecond baron leſſa la terre que il ad en dzoit ſa feme a un auter

ALſo, if a woman inheritrix taketh huſband, and they have iſſue a Son, and the Huſband dieth, and ſhe takes another Husband, and the Second Husband letteth the Land which he

ter pur terme de sa vie, & puis la feme morust, & puis le tenant a terme de vie surrendist son estate a le second baron, &c. Quære si le fits le feme poit enter en cest cas sur le second baron durant la vie le tenant a terme de vie, &c. Mes il est cleere ley, q apres la mort le Tenant a terme de vie, le fits la feme poit enter, pur ceo que le discontinuance que fuit tantsolement pur terme de vie, est determine, &c. per la mort de melme le Tenant a terme de vie.

hath in right of his Wife to another for term of his life, and after the Wife dyeth, and after the Tenant for life surrendreth his estate to the second Husband, &c. *Quære* if the sonne of the Wife may enter in this case upon the second Husband during the life of Tenant for life, &c. But it is cleer Law, that after the death of the Tenant for life, the sonne of the Wife may enter, because the Discontinuance which was only for term of life, is determined, &c. by the death of the same Tenant for life.

Note, there be three kind of surrenders, viz. a Surrender properly taken at the Common Law, which is here before described, and whereof Littleton speaketh. Secondly, a surrender by custome of lands holden by Copy, or of Customary Estates, whereof you have read before, Sect. 74. and a Surrender improperly taken (as appears before, Sect. 550.) of a deed. And so of a surrender of a Patent, and of a rent newly created, and of a fee simple to the King.

2 Eliz. Dyer 176. 14 H. 7. 3. 27 Ass. 37. 49 E. 3. 2. 11 H. 4. 2 12 H. 4. 21. 13 H. 4. 13.

A Surrender properly taken is of two sorts, viz. a surrender in deed, or by express words, (whereof Littleton here putteth an example) and a surrender in Law wrought by consequent by operation of Law. Littleton here putteth his case of a Surrender of an Estate in possession, for a right cannot be surrendred. And it is to be noted, that a surrender in Law is in some cases of greater force then a surrender in Deed. As if a man make a lease for years, to begin at Michaelmas next, this future interest cannot be surrendred, because there is no reversion wherein it may drown, but by a surrender in Law it may be drowned. As if the Lessee before Michaelmas take a new lease for years, either to begin presently, or at Michaelmas, this is a surrender in Law of the former lease. Fortior & senior est dispositio legis quam hominis.

14 H. 8. 15. 37 H. 6. 17. 21 H. 7. 6. 40 E. 3. 24. 31 Ass. 26. 50 E. 3. 6. 44 Ass. 3. 35 H. 8. Dyer 37. 8 Ass. 20. 4 Ma. Dyer 141. 11 Eliz. Dyer 280.

6 H. 7. 9. 37 H. 6. 17. 21 H. 7. 6. 14 H. 7. 4. Lib. 6. fo. 63. Sir Moyle Finches Case.

Also there is a surrender without Deed, whereof Littleton putteth here an example of an Estate for life or lands, which may be surrendred without Deed, and without livery of seisin, because it is but a yielding or restoring of the Estate again to him in the immediate reversion or remainder, which are always favoured in Law. And there is also a surrender by Deed, and that is of things that lie in grant, whereof a particular Estate cannot commence without Deed, and by consequent the Estate cannot be surrendred without Deed. But in the example that Littleton here putteth, the state might commence without Deed, and therefore might be surrendred without Deed. And albeit a particular Estate be made of Lands by deed, yet it may be surrendred without Deed, in respect of the nature & quality of the thing demised, because the particular Estate might have been made without Deed: and so on the other side. If a man be Tenant by the Courtesie, or Tenant in Dower of an Advowson, Rent or other thing that lies in grant, albeit there the Estate begin without Deed, yet in respect of the nature and quality of the thing that lies in grant, it cannot be surrendred without Deed. And so it is if a lease for life be made of lands, the remainder for life, albeit the Remainder for life began without Deed, yet because Remainders and Reversions, though they be of lands, are things that lie in Grant, they cannot be surrendred without Deed. See in my Reports plentiful matter of Surrenders.

19 H. 6. 33. 27 Ass. 46. 14 H. 7. 4. 1 H. 6. 2. Pl. Com. 342.

¶ *Quære si le fits la feme poit enter, &c.* Here Littleton maketh a Quære. Do as grave and learned men may doubt without any imputation to them, for the most learned doubteth most, and the more ignorant for the most part are the more bold and peremptory.

It is holden of some, that after the surrender the issue in tail during the life of a Tenant for life may enter, for that having regard to the issue, the state for life is drowned, and consequently the inheritance gained by the lease is by the acceptance of the surrender banished and gone, as if Tenant in tail make a lease for life, whereby he gaineth a new reversion (as hath

ben laid, if Tenant for life surrender to the Tenant in tail, the Estate for life being drowned, the reversion gained by wrong is vanished and gone, and he is Tenant in tail again, against the opinion Obiter of Portington 21 H. 6. 53.

21 H. 6. 53.

But herein are two diversities worthy of observation. The first is, that having regard to the parties to the surrender, the Estate is absolutely drowned, as in this case between the Lessee and the second Baron. But having regard to strangers who were not parties or privies thereunto, lest by a voluntary surrender they may receive prejudice, touching any right or interest they had before the surrender, the Estate surrendred hath in consideration of Law a continuance. As if a reversion be granted with warranty, and Tenant for life surrender, the Grantee shall not have Execution in value against the Grantor who is a stranger during the life of Tenant for life, for this surrender shall work no prejudice to the Grantee who is a stranger.

45 E. 3. 17. 5 H. 5. 9. 9 E. 4. 18.

So if Tenant for life surrender to him in reversion being within age, he shall not have his age, for that should be a prejudice to a stranger, who is to become Demandant in a real action.

40 E. 3. 13. 9 E. 4. 18. 1 H. 6. 1. 24 E. 3. 77. 5 H. 5. 8. 26 Ass. 38. 7 H. 6. 2. b.

If Tenant for life grant a Rent-charge, and after surrender, yet the rent remaineth for to that purpose he cometh in under the charge. Causa qua supra.

If a Bishop be seised of a Rent-charge in fee, the Tenant of the land intoole the Bishop and his Successors, the Lord enter for the Mortmain, he shall hold it discharged of the Rent, for the entry for the Mortmain affirmeth the alienation in Mortmain, and the Lord claimeth under his Estate; but if Tenant for life grant a rent in fee, and after intoole the Grantee and the Lessor enter for the forfeiture, the rent is revived, for the Lessor doth claim above the settlement. But if I grant the reversion of my Tenant for life to another for term of his life, and Tenant for life attorn, now is the waste of Tenant for life dispunishable. Afterwards I release to the Grantee for life and his heirs, or grant the reversion to him and his heirs, now albeit the Tenant for life be a stranger to it, yet because he attorned to the Grantee for life, the Estate for life which the Grantee had, shall have no continuance in the eye of the Law as of him, but he shall be punished for waste done afterward.

40 E. 3. 16.

The second diversity is, that for the benefit of an stranger the Estate for life is absolutely determined. And if he in the reversion made a lease for years, or grant a Rentcharge, &c. and then the Lessee for life surrender, the lease or rent shall commence *mitidem*. So in the case of Littleton, first between the Lessee and the second husband, the Estate for life is determined; and secondly, for the benefit of the issue it shall be so adjudged in Law. Here note a diversity, when it is to the prejudice of a stranger, and when it is for his benefit.

If a man make a lease to A. for life, reserving a Rent of forty shillings to him and his heirs, the remainder to B. for life, the Lessor grant the reversion in fee to B. A. attorn, B. shall not have the rent, for that although the fee simple do drown the remainder for life between them, yet as to a stranger it is in esse, and therefore B. shall not have the Rent, but his heir shall have it.

Adjudge Mich. 18. & 17. Eliz. int. Turner Pl. & Gray def. in ejectione firmæ in Communi banco. Rot. 945. Sir Francis Flemmings Case.
(a) 6 H. 4. 7. Pl. Com. 418.
(b) 32 H. 8. B. surrender 52.

A Master of an Hospital being a sole Corporation, by the consent of his brethren makes a lease for years of part of the possessions of the Hospital, afterwards the Lessee for years is made master, the term is drowned, for a man cannot have a term for years in his own right, and a Freehold in autre droit to consist together (as if a man Lessee for years take a Feme Lessee to wife.) (a) But a man may have a Freehold in his own right and a term en autre droit, and therefore if a man Lessor take the feme Lessee to wife, the term is not drowned, but he is possessed of the term in her right during the Coverture. (b) So if the Lessee make the Lessor his Executor, the term is not drowned. Causa qua supra.

But if it had been a Corporation aggregate of many, the making of the Lessee master had not extinguished the term no more then if the Lessee had been made one of the brethren of the Hospital.

Sect. 637.

Vide Sect. 638.

¶ *UN foits.* Here it is to be observed that it is not necessary that the Tenant in tail be ever seised of an estate tail at the time when the Discontinuance of the whole Estate is begun; as if Tenant in tail make a lease

¶ *Nota que un estate taile ne poit estre discontinue, mes la ou cestuy que fait l' discontinuance fuit unfoits seisie per force de le taile, si non*

NOte, that an estate Tail cannot be discontinued, but there where he that makes the discontinuance was once seised by force of the Tail, unlesse it be

que

que ſoit per reaſon de garrantie, &c. Come ſi ſoit aiel, pier, & fits, & layel ſoit Tenant en taile, & eſt diſſeiſie per le pier que eſt ſon fits, & le pier fait un feoffement de ceo ſans garranty & debie, & puis layel debie, le fits bien poit enter ſur le feoffée, pur ceo que ceo ne fuit pas diſcontinuance, entant que le pier ne fuit ſeiſie per force de le taile al temps del feoffment, &c. Mes fuit ſeiſie en fée per le diſſeiſin fait al aiel.

by reaſon of a warranty, &c. As if there be Grandfather, Father, and Son, and the Grandfather is Tenant in tail, and is diſſeiſed by the Father who is his Son, and the Father maketh a feoffement of this without warranty, and die, and afterwards the Grandfather dies, the Son may well enter upon the feoffee, becauſe this was no diſcontinuance, inaſmuch as the Father was not ſeiſed by force of the entail at the time of the feoffement, &c. but was ſeiſed in fee by the diſſeiſin of the Grandfather.

for life, whereby he gaineth, as hath been ſaid, a fee ſimple by wrong in this caſe if he grant the reverſion in fee, and the leſſee dieth, the whole eſtate is diſcontinued, and yet at the time of the grant (by which the Diſcontinuance continueth) he was not ſeiſed by force of the tail, and therefore Littleton materially added theſe words (un fois) that is, that he was once ſeiſed by force of the eſtate tail: and ſeeing that (as hath been ſaid) a Diſcontinuance is a priſation, the rule of Law agreeth well with the rule of Philoſophy, that Omnis privatio præſupponit habitum; and therefore he cannot diſcontinue that eſtate which he never had.

Vide Sect. 595. 595. 597. 601. 640, 638.

¶ *Si non que il ſoit per reaſon del garrantie, &c.* For in many caſes a warranty added to a conveyance is ſaid to make a diſcontinuance Ab effectu, although he that made the conveyance was never ſeiſed by force of the eſtate tail, becauſe it taketh away the entry of him that right hath, as a diſcontinuance doth. As if Tenant in tail be diſſeiſed and dieth, and the iſſue in tail releaſe to the Diſſeiſor with warranty, in this caſe the iſſue was never ſeiſed by force of the tail, and yet this hath the effect of a diſcontinuance by reaſon of the warranty, and the reaſon hereof appeareth before in this Chapter.

9 E.4.19. 12 E.4.12. 21 E.4.37.

¶ *Le fits poit enter.* But if the Father that made the feoffement had ſurbided the Grandfather, he ſhould never have entred againſt his own feoffement; but albeit the Father had ſurbided, yet after his deceaſe the Son ſhould have entred for the reaſon here yielded by Littleton. But if the feoffement had been with warranty, then it had wrought the effect of a Diſcontinuance, and therefore Littleton ſaith Garranty, without warranty.

15 E.4. Diſcont. 30. & entr. Cong. 21. 21 E.4.37. 9 E.4.19. 39 H.6.45. 21 H.6.32. 11 E.4.12. 2 Mar. Dier 98.

Sect. 638.

¶ ITem, ſi Tenant en taile fait un leaſe a un auter pur terme de vie, & le Tenant en taile ad Iſſue & debie, & le reverſion deſcendiſt a ſon Iſſue, & puis liſſue granta le reverſion a luy diſcendue a un auter en fée, & le Tenant a terme de vie atturna, & debie, & le Grantée del reverſion enter, &c. & eſt ſeiſie en fée en ſa vie del Iſſue, & puis iſſue en le taile ad iſſue fits & debie, il ſem-

ALſo, if Tenant in tail make a leaſe to another for term of life, and the Tenant in tail hath Iſſue and dieth, and the Reverſion deſcendeth to his Iſſue, and after the Iſſue granteth the reverſion to him deſcended, to another in Fee, and the Tenant for life attorn and die, and the Grantee of the reverſion enter, &c. and is ſeiſed in Fee in the life of the Iſſue, and after the Iſſue in tail hath

ble que ceo neſt pas diſcontinuance a le fits, mes que le fitz poit enter, &c. pur ceo que ſon pier a que le reverſion de fee ſimple diſcendiſt, &c. naboit unques riens en la terre, per force de le Taile, &c.

Iſſue a ſon and dieth, it ſeems that this is no diſcontinuance to the ſon, but that the Son may enter, &c. for that his father, to whom the reverſion of the fee ſimple deſcended, had never any thing in the land by force of the entail, &c.

15 E.4. Diſcont.30.43.E.3.6. 21 H.6.52. 4 H.7.17. 2. H.6.52,53.

¶ Of this opinion is Littleton in our Books.

¶ *Le Grantee del reverſion enter, &c.* Here it is to be underſtood and obſerved, That in this caſe of the Grant of the Reverſion Littleton doth not ſay Sans garrantie, becauſe if a warranty had been added, it had wrought no diſcontinuance, for that (as hath been ſaid) the diſcontinuance in judgment of Law was but for life: but when the addition of a warranty doth work a diſcontinuance, then Littleton ſaith, Sans garrantie, as you may obſerve often in this Chapter.

Sect. 639.

¶ CAr ſi home ſeiſie en droit la feme, leſſa meſme la Terre a un auter pur terme de vie, ore eſt le reverſion de fee ſimple a le Baron, &c. Et ſi le Baron morust, vivant ſa feme, & le Tenant a terme de vie, & le reverſion diſcendiſt al heire le Baron, ſi le heire le Baron grant le reverſion a un auter en fee, & le tenant atturna, &c. & puis le tenant a terme de vie morust, & le Grauntee del Reverſion en ceſt caſe enter: En ceſt caſe ceo neſt pas Diſcontinuance a le Feme, mes la feme bien poit enter ſur le Grantee, &c. pur ceo q̄ le grantor naboit riens al temps del Graunt, en le droit la Feme, quant il fiſt le graunt del reverſion.

FOr if a man ſeiſed in the right of his Wife, letteth the ſame land to another for term of life, now is the reverſion of the fee ſimple to the Husband, &c. and if the Husband dieth, living his Wife, and the Tenant for life, and the reverſion deſcend to the heir of the Husband, if the heir of the Husband grant the reverſion to another in fee, and the Tenant attorn, &c. and afterwards the Tenant for life dieth, and the grantee of the reverſion in this caſe enter: In this caſe this is no Diſcontinuance to the Wife, but ſhe may well enter upon the Grantee, &c. becauſe the Grantor had nothing at the time of the grant, in the right of his Wife, when he made the Grant of the reverſion.

14 E.3. Diſcont.5. 28 Aſſ. p.2. 18 E.3.54. 38 E.3.32. 32 H.6.24. 21 H.6.52,53. 15 E.4. Diſcont.30.

¶ *Car ſi home ſeiſie en droit ſa feme, leſſa, &c.* Here Littleton putteth his caſe where the Baron onely makes a leaſe for life; for if he and his wife joyne in a leaſe by Deed, there the reverſion is not diſcontinued. Vide before, Sect. 620. More need not to be ſaid hereof, in reſpect the like caſe of Tenant in taile hath been explained before.

Sect.

Sect. 640.

¶ ET issint il semble, coment que homes queux sont inheritables per force de le Taile, e ils ne fueront unques seisie per force de mesme le taile, que tiel feoffements ou grants per eux fait sans clause de Garrantie, nē pas discontinuante a lour issues apres lour deceale, mes que lour Issues poyent bien enter, &c. coment que ceux queux fierent tielz grants en lour vies fueront forbarres dentrer per lour Fait demesne, &c.

AND so it seemeth, that men which are inheritable by force of an Entail, and never were seised by force of the same entail, that such feoffments or grants by them made without clause of warranty, is no discontinuance to their issues after their deceasē, but that their issues may well enter, &c. albeit they which made such Grants in their lives were forebarred to enter by their own Act, &c.

Sect. 641.

¶ ET si le Tenant en Taile ad issue deux fits, e leigne disseisist son pier, e ent fait feoffment en fee sans clause de Garrantie, e devie sans issue, e puis le pier devie, le puisne fits poit bien enter sur le feoffee, pur ceo que le feoffment son eigne frere ne poit estre discontinuance, pur ceo que il ne fuit unques seisie per force de mesme le Taile. Car il semble encounter reason, que per matter en fait, &c. sans clause de Garrantie, home poit discontinuer un fait, &c. que ne fait unques seisie per force de mesme le Taile.

AND if Tenant in Tail hath issue two Sons, and the eldest disseiseth his Father, and thereof maketh a feoffment in Fee, without clause of Warranty, and die without issue, and after the father die, the youngest son may well enter upon the feoffee, for that the Feoffement of his elder brother cannot be a discontinuance, because he was never seised by force of the same tail. For it seemeth to be against reason, that by matter in fact, &c. without clause of Warranty, a man should discontinue a Deed, &c. that was never seised by force of the same Tail.

¶ NOte, here also in the two Sections appeareth, That (as hath been said before) a Warranty, though he were never seised by force of the Tail, may work the effect of a Discontinuance. Vide Sect. 590, 596, 597, 601, 658.

¶ *Home poit discontinuer un fait, &c.* This is mistaken, and should be, Home poit discontinuer un taile, and so is the Original.

Sect.

Sect. 642.

¶ NOta, ſi ſoit Sñr & Tenant, & le Tenant dona les tenements a un auter en taile, le remainder a un auter en fee, & puis l'Tenant en tail fait un leas a un home pur terme de vie, &c. ſavant le reverſion, &c. & puis granta le reverſion a un auter en fee, & le Tenant a terme de vie, atturna, &c. & puis le grantee del reverſion mozuſt ſans heire, oze meſme le reverſion devient al Seiginoz per voy deſcheate. Si en ceſt cas le Tenant a terme de vie deviaſt, & le Seignioz per force de ſon eſcheat enter en la vie le Tenant en le taile, & puis le Tenant en le taile mozuſt, il ſemble en ceo cas que ceo neſt pas diſcontinuance al iſſue en le taile, ne a celuy en le remainder, mes que il poit bien enter pur ceo que le Seignioz eſt eins per voy deſcheat, & nemy per le Tenant en le taile, &c. Mes ſecus eſſet, ſi le reverſion uſt eſte execute en le Grantee, en le vie le Tenant en le taile, car adonque uſt le grantee eſtein en les tenements per le Tenant en le tail, &c.

NOte, if there be Lord and Tenant, and the Tenant giveth lands to another in tail, the remainder to another in Fee, and after the Tenant in tail make a leaſe to a man for term of life, &c. ſaving the reverſion, &c. and after granteth the reverſion to another in Fee, and the Tenant for life attorn, &c. and after the Grantee of the reverſion die without heir, now the ſame reverſion cometh to the Lord by way of eſcheat. If in this caſe the Tenant for life dieth, and the Lord by force of his eſcheat enter in the life of Tenant in tail, and after the Tenant in tail dieth, it ſeemeth in this caſe that this is no diſcontinuance to the iſſue in tail, nor to him in the remainder, but that he may well enter, becauſe the Lord is in by way of eſcheat, and not by the Tenant in tail: but otherwiſe it ſhould be, if the reverſion had been executed in the Grantee, in the life of Tenant in tail, for then had the Grantee been in the tenements by the Tenant in tail, &c.

Vide Sect. 620.

Lib. 1. fol. 136. *Lib.* 3. fol. 62, 63.

¶ The reaſon of this caſe is here rendred (as before it was in this Chapter) that albeit the reverſion be executed in the Lord by eſcheat in the life of Tenant in tail, yet becauſe he is in by the Tenant in tail but by the eſcheat, it worketh no Diſcontinuance. But if it had been executed in the life of Tenant in tail in the Grantee which was in by Tenant in tail, then the Lord by the eſcheat ſhould have taken advantage of it. But of this ſufficient hath been ſaid before in this Chapter.

Sect. 643, 644, 645.

¶ *Parcel de ſon Glebe, &c.* In whom the fee ſimple of the

¶ ITem, ſi un parſon dun Egliſe, ou un Vicar un

ALſo, if a Parſon of a Church, or a Vicar of a Church alien

Egliſe

Eſglise, alien certeine terres, ou tenements parcel de ſon glebe, &c. a un auter en fee, & mozuſt, ou reſigne, &c. ſon ſucceſſoz poit bien ent, nient contrileant tiel alienation, come eſt dit en un Nota 2 H. 4. Terme Mich. quod ſic incipit.

certain Lands or Tenements parcel of his Glebe, &c. to another in fee, and die or reſign, &c. his Succeſſor may well enter notwithſtanding ſuch alienation, as is ſaid in a *Nota* 2 *H.* 4. *Termino Mich.* which beginneth thus.

Sect. 644.

¶ NOta quod dictum fuit pro lege en un briefe de accompt port per un maſter d' un college, vers un Chapleine, que ſi un Parſon, ou un Vicar, graunt certeine terre, quel eſt de droit ſon Eſgliſe a un auter & debie, ou permute, le Succeſſoz poit enter, &c. Et jeo croy que la cauſe eſt, pur ceo que l' Parſon, ou Vicar, que eſt ſeiſie, &c. come en droit de ſon Eſgliſe, nad pas droit de fee ſimple en les tenements, & le droit de fee ſimple de ceo demurt en aſcun auter perſon, & pur cel cauſe ſon ſucceſſ. poit bien enter, nient contrileant tiel alienation, &c.

Nota quod dictum fuit pro lege, in a Writ of Account brought by a Maſter of a Colledge againſt a Chaplain, that if a Parſon or Vicar grant certain Lands, which is of the right of his Church to another, and die or changeth, the Succeſſor may enter, &c. And I take the cauſe to be, for that the Parſon or Vicar that is ſeiſed, &c. as in right of his Church, hath no right of the Fee ſimple in the Tenements, but the right of the Fee ſimple abideth in another perſon, And for this cauſe his Succeſſor may well enter, notwithſtanding ſuch alienation, &c.

glebe, is a queſtion in our Books: (a) ſome hold that it is in the Patron, but that cannot be for two reaſons; firſt, for that in the beginning the land was given to the Parſon & his Succeſſors, and the Patron is no Succeſſor; ſecondly, the words of the Writ of *Juris utrum de, &c. libera Eleemoſyna Eccleſiæ de D.* and not of the Patron. Some others do hold that the fee ſimple is in the Patron and Ordinary, but this cannot be for the cauſes aforeſaid: and therefore of neceſſity the fee ſimple is in adeyance, as Littleton ſaith. And this was provided by the providence and wiſdome of the Law, for that the Parſon and Vicar have Curam animarum, and were bound to celebrate Divine Service, and adminiſter the Sacraments; and therefore no act of the Predeceſſor ſhould make a Diſcontinuance to take away the Entry of the Succeſſor, and to bring him to a real action wherein he ſhould be meaſure of maintenance in the mean time; upon conſideration of all our Books I obſerve this diverſity, that a Parſon or Vicar, for the benefit of the Church and of his Succeſſor is in ſome caſes eſteemed in Law to have a fee ſimple qualified, but to do any thing to the prejudice of his Succeſſor, in many caſes the Law adjudgeth him to have in effect but an eſtate for life, *Cauſæ Eccleſiæ publicis cauſis æquiparantur, and ſumma ratio eſt quæ pro religione facit.* And *Eccleſia fungitur vice minoris, meliorem facere poteſt conditionem ſuam, deteriorem nequaquam.*

So a Parſon, Vicar, Archdeacon, Prebend, Chantry-Prieſt and the like, may have an Action of Waſte, and in the Writ ſhall be ſaid, *ad exhæreditationem Eccleſiæ*, &c. *ipſius B.* or *Prebendæ ipſius A.*

And the Parſon, &c. that maketh a leaſe for life, ſhall have a Conſimili caſu varying the

(a) 8 H. 6. 24. 22 H. 8. 8. Vide Regiſt. 307. a. 45 E. 3. tit. Eſchange. 22 H. 8. 9.

F.N.B. 49. L.

Bracton, lib. 4. fol. 256.

Brit. fol. 143.

F.N.B. 55. D. & 57 E. F. 10 H. 7. 3.

F.N.B.49. l. m. n. 20 E.3. tit. Juris utrum. Temps E. 3. Juris utrum. 14.1. 14 E. 3. ibid.4. F.N.B.50. 30 E.3. 26. 21 E.11. tit. Entry 10. F.N.B.206. F. Regiſter 237. 4 E.4.2.8 E.3.tit. Entry 3. 7 E. 3. 54, 55.

the life of the Leſſee and a Writ of entry ad communem legem after his death; or a Writ, Ad terminum qui præteriit, or a quod permittat in the debet, and none can maintain any of theſe Writs but a Tenant in fee ſimple or fee tail.

And a Parſon, &c. may receive homage, which tenant for life cannot do. Temps E.1. Incumbent 19.

(c) F.N.B. 49.L.50.a.

(c) Likewiſe a Parſon, &c. ſhall have a Writ of Meine, and a Contra formam feoffamenti.

But a Parſon cannot make a Diſcontinuance as Littleton here teacheth, for that ſhould be to the prejudice of his Succeſſor to take away his entry, and to drive him to a real action.

Alſo if a Parſon, &c. make a leaſe for years reſerving a rent, and dieth, the leaſe is determined by his death; as if Tenant for life had made a leaſe, no acceptance of the rent by the Succeſſor can make it good. Alſo in a real action a Parſon, Vicar, Arch-deacon, Prebend, &c. ſhall have aid of the Patron and Ordinary as Tenant for life ſhall have. So as it is evident that to many purpoſes a Parſon hath but in effect an Eſtate for life, and to many a qualified fee-ſimple, but the entry, fee and

20 E.3. tit. Aid 30. 25 E.3. 54. 8 E.3.45. 8 H. 6.24. 11 H.6.9. 6 E.3.45. 43 Aſſ. Pl.13. F.N.B. 129.

Sect. 645.

¶ CAR un Eveſq poit aver bꝛe de droit de tenements de droit de ſon Eſgliſe, pur ceo que le droit eſt en ſon Chapiter, & le fee ſimple demarrant en luy & en ſ̄ Chapiter. En un Dean poit aver bꝛe de droit pur ceo que le droit demurt en luy. Et un Abbe poit aver brieſe de droit, q̄ ceo que le droit demurt en luy, & en ſon covent. Et un Maſter dō Hoſpital poit aver brieſe de droit, pur ceo que le droit demurt en luy, et en ſes confreees, &c. Et ſic de aliis caſibus conſimilibus. Mes un parſon ou un Vicar ne poit aver brieſe de droit, &c.

FOR a Biſhop may have a Writ of right of the tenements of the right of his Church, for that the right is in his Chapter, and the fee ſimple abideth in him and in his Chapter. And a Dean may have a Writ of right, becauſe the right remains in him. And an Abbot may have a Writ of right for that the right remains in him and in his Covent. And a Maſter of an Hoſpital may have a Writ of right becauſe the right remaineth in him and in his confreres, &c. And ſo of other like caſes. But a Parſon or Vicar cannot have a Writ of Right, &c.

right is not in him, and that is the reaſon that he cannot diſcontinue the Fee ſimple that he hath not, nor ever had; for as it hath been ſaid, Omnis privatio præſupponit habitum. And for the ſame cauſe he cannot haue a writ of right, nor a writ of right in his nature, as a writ of Right Sur diſclaimer of cuſtomes and ſervices, Ne injuſte vexes, rationabilibus divinis, quo jure, and the like.

But here it appeareth by Littleton, that ſuch bodies politick or corporate as have a ſole ſeiſin, and may have a writ of right for that the fee and right in them (albeit they cannot abſolutely convey away their Land, &c. without aſſent of others) may make diſcontinuance, as a Biſhop and Abbot, a Dean, or a maſter of an Hoſpital, or the like. But this is to be underſtood where a dean, or a maſter of an Hoſpital, &c. are ſolely ſeiſed of diſtinct poſſeſſions; for if the body that is ſeiſed be aggregate of many, as the Dean and Chapter, Maſter and Confreres, &c. then the Feoffment of the Dean or Maſter is ſo far from a continuance as it is a diſſeiſin.

44 E.3.11. 11 H 6.68. 9 E 4.16. 18 E.2.7. 6 E.3. 11. 5 E.2. Aid 167. 12 H.4. 11. 32 E.3. Aid 39. 38 E.3. 19. 14 E.3. Juris utrum 4.

And theſe that have the fee and right in them ſhall not have aid in reſpect of their high and large Eſtate, albeit any of them be preſentable: but a Dean that is Collative ſhall have aid of the King.

And it is to be obſerved, that the remedy is ever agreeable to the right; and therefore the Biſhop, Dean, Maſter of an Hoſpital, that hath College and common Seal, or the like ſhall have a writ of Right, which is the higheſt Remedy, for that they have the higheſt Eſtate.

Here

Here Littleton citeth the Book Caſe, Mich. 2. H. 4. as an Authority whereupon he groundeth his opinion. And it is to be obſerved, that the years of H. 4. were publiſhed before Littleton did write.

But at this day the Biſhop, Dean, Maſter of an Hoſpital, and the like, that have the fee and right in them, as hath been ſaid, cannot diſcontinue, neither can they, or any Parſon, Vicar, Archdeacon, Prebend, or any other having any Eccleſiaſtical living with aſſent of Dean and Chapter, Patron and Ordinary, or the conſent of any others, make any Leaſe, Gift, Grant or Conveyance, Eſtate, Charge or Incumberance, to bind his ſucceſſor, other than for term of one and twenty years, or three lives in poſſeſſion, whereupon the accuſtomed rent or more ſhall be reſerved. Theſe be excellent Laws, and have been well expounded for the maintenance of Religion, and the good of Gods Church; for otherwiſe it is to be feared that holy Church would loſe more than it would gain in theſe dates. vide Sect. 5. 7. 593. &c. 1 Eliz. c. 18. 13 Eliz. cap. 20. 1 Jacobi, cap. 3. Lib. 1. fo. 46. Lib. 4. fo. 76. & 20. Lib. 5. fol. 9. & 14. Lib. 6. fol. 37. Lib. 7. fo. 8. Lib. 11. fo. 67.

But where Littleton in this and other Sections makes mention of Maſters of Hoſpitals, the Reader muſt know, that ſince Littleton wrote, there hath been a great alteration made by divers Acts of Parliament concerning Hoſpitals. 37 H. 8. 31 H. 8. 32 H. 8. 37 H. 8. 1. E. 6. &c.

¶ *Maſter del Hoſpital.* Theſe points concerning Hoſpitals were reſolved (e) by the Juſtices. (e) Paſch. 24 Eliz. The Lord Cheneyes caſe.

Firſt, That no Hoſpital was given to the Crown by the Statute of 27 H. 8. nor any Hoſpital is within the Statute of 31 H. 8. of Monaſteries, but only Religious and Eccleſiaſtical Hoſpitals, and that no Lay Hoſpital was within thoſe Statutes. Lib. 2. fol. 48, 49. Eveſque de Canterburies caſe.

Secondly, If upon the foundation of any Lay Hoſpital, or after it was ordained, That one or divers Prieſts ſhould be maintained within the Hoſpital to celebrate divine ſervice to the poor, and to pray for the ſoul of the Founder, and all Chriſtian ſouls, or the like, and that the poor of ſuch Hoſpitals ſhould make the like Oriſons, yet ſuch an Hoſpital is not within the ſaid Statutes, for the Hoſpital is lay, and not religious; and all or the moſt part of antient lay Hoſpitals were founded or ordained after the like ſort, and the makers of thoſe Statutes never intended to overthrow works of Charity, but to take away the abuſe.

Thirdly, That no Hoſpital was given to the King by the Statute of 37 H. 8. but in two caſes, where the Donors, Founders or Patrons, &c. had entred and expulſed the Prieſts, Wardens, &c. between the fourth day of February, Anno 27 H. 8. and the ſide and twentieth of December, Anno 37 H. 8. or where King Henry the eighth by commiſſion according to that act ſhould enter, and ſeiſe the ſame, but that determined by the death of that King. Lib. 1. fol. 24. Porters caſe.

Fourthly, That the Statute of 1 E. 6. extended not to any Hoſpital whatſoever, either lay or religious, as by the ſame appeareth. Porters caſe, ubi ſupra. Lib. 4. 111, 113, 114, 116.

And I was of Counſel with the Lord Cheney in this caſe, which ſeeing it may do good for maintenance of Charitable uſes, I thought good ſummarily to report it. To this I will adde, Panis pauperum vita pauperum, qui defraudit eos vir ſanguinis eſt. In Lamberts caſe. Eccleſiaſticus, c. 34. v. 22.

Nota, of Hoſpitals ſome are Corporations agregate of many, as of Maſter or Warden, &c. and his confreres: ſome where the Maſter or Warden hath only the eſtate of Inheritance in him, and the Brethren or Siſters power to conſent, having College and Common Seal: ſome where the Maſter or Warden hath the ſtate in him, but hath no College and Common Seal, and ſuch a Maſter or Warden ſhall have a Juris utrum: any of theſe Hoſpitals ſome be eligible, and ſome donative, and ſome preſentable. 14 E. 3. Juris utrum.

Sect. 646.

¶ Mes le pluis haut briefe q̄ ils point aver eſt l'briefe de Juris utrum, le quel eſt graund proofe que le droit de fee neſt en eux, ne en nul auters, &c. Mes le droit de fee ſimple eſt en abeiance, &c. ceo eſt adire, que il eſt tantſolement en le remembrance, entendment, & conſideration de la ley, &c. Car moy ſemble que tiel

BUt the higheſt Writ that they can have, is the Writ of *Juris utrum*, which is a great proofe that the right of fee is not in them, nor in any others, *&c.* but the right of the fee ſimple is in abeyance, that is to ſay, that it is only in the remembrance, intendment and conſideration of the Law, *&c.* for it ſeemeth to me, thoſe

thoſe et tiel droit que eſt dit en divers Lieurs eſtre an abeyance, eſt a tant adire en Latine (ſ.) Talis res, vel tale rectum, quæ, vel quod non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione & intelligentia Legis, & quod alii dixerunt, talem rem aut tale rectum fore in nubibus. Mes jeo ſuppoſe que ils intenderont per ceux parols, In nubibus, &c. come jeo aye dit adevant.

That ſuch a thing, and ſuch a right, which is ſaid in divers books to be in abeyance, is as much to ſay in Latine (s) *Talis res, vel tale Rectum, quæ vel quod non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione & intelligentia legis, & quod alii dixerunt, talem rem, aut tale rectum fore in nubibus.* But I ſuppoſe, that they mean by theſe words, (*In nubibus*, &c.) as I have ſaid before.

24 E. 3. 63. Vide Sect. 648, 649, 650, 651.

¶ *En abeiance*: That is in expectation, of the French word Bayer to expect. For when a Parſon dieth, we ſay that the freehold is in Abeyance, becauſe a ſucceſſor is in expectation to take it; and here note the neceſſity of the true interpretation of words.

Vide Sect. 1.

If Tenant Per terme dauter vie dieth, the freehold is ſaid to be in Abeyance until the occupant entreth. If a man make leaſe for life, the remainder to the right heires of I. S. the fee ſimple is in abeyance until I. S. dieth. And ſo in the caſe of the Parſon, the fee and right is in abeyance, that is in expectation, in remembrance, intendment, or conſideration of Law. 1. In conſideratione ſive intelligentia legis, becauſe it is not in any man then living; and the right that is in abeyance is ſaid to be In nubibus, in the Clouds, and therein hath a quality of fame whereof the Poet ſpeaketh.

Virg. 4. Eneid.

Inſequiturque ſolo, & caput inter nubila condit.

Sect. 647.

¶ Item, ſi un parſon dun eſgliſe devie, ore le franktenement del glebe del perſonage eſt en nulluy durant le temps que le parſonage eſt voide, mes in abeiance, ceſt aſcavoir, in conſideration e en le intelligence de la ley, tanque un autre ſoit fait parſon de meſme legliſe, e immediat quant un autre eſt fait parſon, le franktenement en fait eſt en luy come ſucceſſor.

Also, if a Parſon of a Church dieth, now the Freehold of the glebe of the Parſonage is in none during the time that the Parſonage is void, but in abeyance, *viz.* in conſideration, and in the underſtanding of the Law, until another be made Parſon of the ſame Church; and immediately when another is made Parſon, the free-hold in deed is in him as Succeſſor.

Brac. fi 1. c. 2. Brit. f. 249.

¶ *Si un Parſon dun Eſgliſe devie*, &c. So it is of a Biſhop, Abbot, Dean, Archdeacon, Prebend, Vicar, and of every other ſole Corporation or body politick preſentative, elective or donative, which inheritances put in abeyance are by ſome called Hæreditas jacentes, and ſome ſay: Que le fee eſt en ba'ance.

Sect.

Sect. 648.

¶ ITem, aſcuns peradventure voillēt arguer & dire, que entant que un parſon ove aſſent del patron & ordinarie poit granter un rent charge hors del Glebe del Parſonage en fee, & illint charger le Glebe del Parſonage perpetualmēt, Ergo, ils ont fee ſimple, ou deux, ou un de eux avoit fee ſimple al meins. A ceo poit eſtre reſpondue, que il eſt principle en le ley, que de chescuns terres il y ad fee ſimple, &c. en aſcun home, ou autermen le fee ſimple eſt en abeyance. Et un autre principle eſt, Que chescun terre de Fee ſimple poit eſtre charge de un Rent-charge en fee per un voy, ou per auter. Et quand tiel rent eſt graunt per le Fait le Parſon & le Patron; & le Ordinarie, &c. en Fee, nul avera prejudice ou parde per force de tiel Grant forſque les Grantors en lour vies & les heires les Patron, & les Succeſſors del Ordinary apres lour deceaſe. Et apres tiel charge, ſi le

ALſo, ſome peradventure will argue and ſay, that inaſmuch as a Parſon with the aſſent of the Patron and Ordinary, may grant a Rent charge out of the Glebe of the Parſonage in fee, and ſo charge the Glebe of the Perſonage perpetually, *ergo*, they have a Fee ſimple, or two, or one of them have a fee ſimple at the leaſt. To this may be anſwered; that it is a Principle in Law, that of every land there is a Fee ſimple, &c. in ſome body, or otherwiſe the fee ſimple is in abeyance. And there is another Principle, that every Land of fee ſimple may be charged with a Rent charge in Fee by one way or other. And when ſuch Rent is granted by the Deed of the Parſon, and the Patron, and Ordinary, &c. in Fee, none ſhall have prejudice or loſs by force of ſuch Grant, but the Grantors in their lives, and the Heirs of the Patron, and the Succeſſors of the Ordinary after their deceaſe. And after ſuch charge

¶ *Il eſt un Principle en la Ley, &c.* Principium, quod eſt quaſi primum caput, from which many caſes have their original or beginning, which is ſo ſtrong, as it ſuffereth no contradiction; and therefore it is ſaid in our Books, that antient Principles of the Law (a) ought not to be diſputed. Contra negantem principia non eſt diſputandum. That which our Author here calleth a Principle, Sect. 3. & 90. he calleth a Maxim. (a) 11 R. 4. Sect. 3. & 90.

Here Littleton in anſwer to an objection alledgeth two Principles. *Firſt*,

¶ *Que de chescun terre il y ad fee ſimple, &c.* This is perſpicuè verum, and needeth no explanation. *Secondly*,

¶ *Chescun terre de Fee ſimple poit eſtre charge en Fee per un voy ou auter.* Hereby it appeareth, That albeit the right of the fee ſimple be in abeyance; yet it may be charged by one way or other. And ſo it may be aliened in fee, albeit the right of the fee be in abeyance, or in conſideration of Law. And herein is a diverſity worthy the obſervation to be made. That when the right of the fee ſimple, is perpetually by judgement of Law in abeyance, without any expectation to come in eſſe, there he that hath the qualified fee concurrentibus his quæ in jure requiruntur, may charge or alien it, as in the caſe of Parſon, Vicar, Prebend, &c. But where the fee ſimple is in abeyance, and by poſſibility may every hour come in eſſe, there the fee ſimple cannot be charged until it cometh in eſſe; As if a Leaſe for life be made, the remainder to the right heirs of I. S. the fee ſimple cannot be charged

charg'd till I S. be dead. And ſo is Littleton to be underſtood viz. that either it may be charged in præſenti, or in futuro.

¶ *Cheſcun terre de Fee ſimple.* And ſo it is of Lands entailed for they may be charged in Fee alſo for the Eſtate tail may be cut off by fine or recovery. Alſo the Eſtate tail may continue, and yet Tenant in tail may lawfully charge the land, and binde the Iſſue in tail. As if a Diſſeiſor make a gift in tail, and the Donee in conſideration of a releaſe by the diſſeiſee of all his right to the Donee, granteth a rent charge to the Diſſeiſee and his heirs, proportionable to the value of his right. this ſhall binde the Iſſue in tail: Vide Sect. 1. Bridgewaters Caſe: which Lands by the rule of Littleton may be charged: and therefore if the owner of thoſe thirteen acres grant a rent charge out of thoſe thirteen acres generally, lying in the Meadow of eighty, without mentioning where they lie particularly, there as the Rate in the land remaines, the charge ſhall remove alſo, But ſince our Author wrote, all Eccleſiaſtical perſons are diſabled to charge in fee any of their Eccleſiaſtical poſſeſſions, as before hath been ſpoken of at large.

44 E. 3. 21, 22.

Vide Sect. 1. Bridgewaters caſe, & 59.

Vide Sect. 593.

¶ *Et quant tiel rent eſt grant, &c.* This is an excellent interpretation and limitation of the ſaid Principle, viz. That none ſhall have prejudice or loſs by any ſuch grant, but ſuch as are party or privy thereunto, as the Patron and his heirs,

31 E. 1. tit. Grant. 90. 8 R. 2. Annuit. 53.

Parſon devie, ſon Succeſſour ne poit venir a le dit Eſglíſe d eſtre Parſon de meſme le Eſglíſe per lay Ley, forſque per preſentment del Patron & admiſſion & inſtitution del Ordinary. Et pur cel cauſe il covient, que le Succeſſor ſoy teigne content, & agree de ceo que ſon Patron & Lordinarie loyalment feſoyent advant, &c. Mes ceo neſt proofe que le Fee ſimple, &c. eſt en le Patron & Lordinarie, ou en alcun deux, &c. Mes la cauſe que tiel grant de Rent charge eſt bone, eſt pur ceo que ceux queux averont intereſt, &c. en la dit Eſglíſe, ſ, le Patron ſolonque lay Ley temporal, & Lordinarie ſolonque la Ley ſpiritual, fueront aſſentus, ou parties a tiel charge, &c. Et ceo ſemble eſtre la verie cauſe que tiel Glebe poit eſtre charge en perpetuitie, &c.

if the Parſon die, his Succeſſor cannot come to the ſaid Church to be Parſon of the ſame by the Law, but by the preſentment of the Patron, and admiſſion and inſtitution of the Ordinary. And for this cauſe the Succeſſor ought to hold himſelf content, and agree to that which his Patron and the Ordinary have lawfully done before, &c. but this is to prove that the fee ſimple, &c. is in the Patron and the Ordinary, or in either of them, &c. but the cauſe that ſuch grant of rent charge is good, is, for that they who have the intereſt, &c. in the ſaid Church, *viz.* the Patron according to the Law temporal, and the Ordinary according to the Law ſpiritual, were aſſenting, or parties to ſuch charge, &c. And this ſeemeth to be the true cauſe why ſuch Glebe may be charged in perpetuity, &c.

the Ordinary and his Succeſſors, and the Parſon and his Succeſſors: which Succeſſors of the Parſon are to be preſented by the Patron or his Heirs, and admitted and inſtituted by the Ordinary of his Succeſſors. The like is to be ſaid of an Archdeacon, Prebend, Vicar, Chauntry-Prieſt, and the like.

¶ *Per le Fait le Parſon, & Patron, & Lordinarie*, &c. yet if the Parſon die, and in time of vacation, the Patron of the aſſent of the Ordinary, or the Patron and Ordinary grant an annuity or rent charge out of the Glebe, this ſhall (as hath been ſaid) binde the ſucceeding Parſons for ever.

16 E. 4. Annuit. 24. 40 E. 30. 3 E. 3. 17. Reg. 38.

If there be Parſon, Patron, and Ordinary, and the Parſon by the Ordinary and aſſent of

of the Ordinary grant an Annuity to another, having quid pro quo conſideration thereof, this ſhall bind the ſucceſſor of the Parſon without the conſent of the Patron.

A Church Parochial may be donative and exempt from all ordinary juriſdiction, and the Incumbent may reſign to the Patron, and not to the Ordinary, neither can the Ordinary viſit; but the Patron by Commiſſioners to be appointed by him: and by Littletons rule, the Patron and Incumbent may charge the Glebe, and albeit it be donative by a Lay-man, yet mere laicus is not capable of it; but an able Clerk infra ſacros Ordines is, for albeit he come in by Lay donation, and not by admiſſion or inſtitution, yet his Function is ſpiritual; and if ſuch a Clerk donative be diſturbed, the Patron ſhall have a Quare impedit of this Church donative, and the Writ ſhall ſay, Quod permittat ipſum præſentare ad Eccleſiam, &c. and declare ſpecial matter in his Declaration. And ſo it is of a Prebend, Chantery, Chappel donative and the like, and no Laps ſhall incur to the Ordinary, except it be ſo ſpecially provided in the foundation. But if the Patron of ſuch a Church, Chantery, Chappel, &c. donative, doth once preſent to the Ordinary, and his Clerk is admitted and inſtituted, it is now become preſentable, and never ſhall be donative after; and then Laps ſhall incur to the Ordinary, as it ſhall of other Benefices preſentable. But a preſentation to ſuch a donative by a ſtranger, and admiſſion and inſtitution thereupon, is meerly void; and all this was reſolved by the whole Court of Kings Bench, for the Rectory Parochial donative of Saint Burian in the County of Cornwal.

6 E.3.4.55. 7 E.3.40.41. F.N.B.152. 7 E.3.32. 39 E.3.17. B. 11 H.4.98. 8 H.3.23. Vid. Sect.33. 530. 11 E.3. fur. urr 3. 8 Aſſ.29.31. 13 Aſſ. 2. 14 H.3. Quar.Imp.183. 17 E.3.12.64. 14 H.4.11. F.N.B.3. ca.16. ca.3. bre. 660. 13 E.4.3. 6 H.7.14. Vide Sect. 530. 22 H.6.26.F.N.B.37. 4.

Hil.1. Jac. coram Rege. Roc.60. inter Will. Fairchild, Pl. & Will. Gayet def. in Treſpaſs.

It appeareth by our Books, and by divers Acts of Parliament, That at the firſt all the Biſhopricks in England were of the Kings foundation, and donative per traditionem baculi (id eſt) the Croſier which was the Paſtoral ſtaffe, & annuli, the Ring whereby he was married to the Church. And King Henry the firſt, being requeſted by the Biſhop of Rome to make them elective, refuſed it, but King John by his Charter bearing date quinto Junii, anno decimo ſeptimo, granted that the Biſhopricks ſhould be eligible. If the King doth found a Church, Hoſpital, or his Chappel donative, he may exempt the ſame from Ordinary Juriſdiction, and his Chancellor ſhall viſit the ſame. May if the King do found the ſame without any ſpecial exemption, the Ordinary is not, but the Kings Chancellor, to viſit the ſame. Now as the King may create Donatives, exempt from the viſitation of the Ordinary, ſo he may by his Charter license any Subject to found ſuch a Church or Chappel, and to ordain that it ſhall be donative, and not preſentable, and to be viſited by the Founder, and not by the Ordinary. And thus began Donatives in England, whereof common Perſons were Patrons.

17 E.3.40. 6 E.3.10. 25 E.3. ca. unico de Proviſor Mat. Par. pa. 10. & 62.

¶ *Ordinarie.* Ordinarius is he that hath ordinary juriſdiction in cauſes Eccleſiaſtical, immediate to the King and his Court of Common Law, for the better execution of Juſtice, as the Biſhop or any other that hath exempt and immediate juriſdiction in cauſes Eccleſiaſtical.

F.N.B. 35 E.4.2. A. B. 27 E.3. 8 & 85. 8 Aſſ.29. 8 E. 3 Aſſ.15. 18 E. Scire Fac.11.6 H.7.14. 6 E.3. Briefe 660. 21 E.3.60. Regiſtr.40. Dyer, 10 El. fo.273. 14 El. ca.5. 2 H.5. cap. 1.

¶ *Ley temporel*, which conſiſteth of three parts, viz. Firſt, On the Common Law, expreſſed in our books of Law and judicial Records. Secondly, on Statutes contained in Acts and Records of Parliament. And thirdly, on Cuſtoms grounded upon reaſon and uſe time out of mind; and the conſtruction and determination of theſe do belong to the Judges of the Realm.

¶ *Ley ſpiritual, &c.* That is, the Eccleſiaſtical Laws allowed by the Laws of this Realm, viz. which are not againſt the Common Law (whereof the Kings Prerogative is a principal part) nor againſt the Statutes and Cuſtomes of the Realm, and regularly according to ſuch Eccleſiaſtical Laws, the Ordinary and other Eccleſiaſtical Judges do proceed in cauſes within their Conuſance. And this Juriſdiction was ſo bounded by the antient Common Laws of the Realm, and ſo declared by Act of Parliament.

The Statute of 25 H.8. cap.19. 33 H.34. 32 H.8.38.

¶ *Admiſſion & Inſtitution.* In propriety of ſpeech, Admiſſion is, when the Biſhop upon examination admitteth him to be able, and fatih, Admitto te habilem. (d) Inſtitution is, when the Biſhop ſaith, Inſtituo te rectorem talis Eccleſiæ cum cura animarum, & accipe Curam tuam & meam. (e) But ſometime in a more large ſenſe, admiſſus doth include Inſtitutus alſo. Cujus præſentatus ſit admiſſus, i. inſtitutus. And it is to be obſerved, That Inſtitution is a good plenarty againſt a common perſon, (but not againſt the King, unleſs he be intituled) and that is the cauſe that regularly plenarty ſhall be tried by the Biſhop, becauſe the Church is full by inſtitution, which is a ſpiritual act, but void or not void, ſhall be tried by the Common Law.

(d) Lib.4.4. fo.75. & 79. Lib.6. fo.49. Lib 7. fo.48.

(e) W.2. cap.5. 13 E.1.

22 H.6.27. 38 E.3.4.

At the Common Law, if a ſtranger had preſented his Clerk, and had been admitted and inſtituted to a Church, whereof any Subject had been lawful Patron, the Patron had no other remedy to recover his Advowſon, but a writ of Right of Advowſon, wherein the

Glanvil, lib.13. ca.18.19. 20 Mirror cap.5. Sect.5. Bract. li.4. fo.238,243, 244, &c.291. Fleta. li.3. ca.12,16,17. Brit. fo.222, 223, 224.

6 E. 3. 28. 39, 52. 39 E. 3. 24. 43 E. 3. 25. 45 E. 3. Quar. imp. 139. 10 E. 2. Com. 22. 31 E. 1. Quar. imp. 186.

Incumbent was not to be removed: and ſo it was at the Common Law, if an uſurpation had been upon an Infant or Feme Covert, having an Advowſon by diſcent, or upon Tenant for life, &c. the Feme Covert, and he in the reverſion were driven to their Writ of Right of Advowſon; for at the Common Law, if the Church were once full, the incumbent could not be removed, and plenarty generally was a good Plea in a Quare impedit, or Aſſiſe of Darreine preſentment, and the reaſon of this was, to the intent that the Incumbent might quietly intend and apply himſelf to his ſpiritual charge. And ſecondly, the Law intended, that the Biſhop that had cure of ſouls within his Dioceſs, would admit and inſtitute an able man for the diſcharge of his duty and his own; and that the Biſhop would do right to every Patron within his Dioceſs. But at the Common Law, if any had uſurped upon the King, and his Preſentee had been admitted, inſtituted, and inducted, (for without induction the Church had not been full againſt the King) the King might have removed him by a Quare impedit, and been reſtored to his preſentation, for therein he hath a Prerogative, Quòd nullum tempus occurrit Regi, but he could not preſent, for the plenarty barred him of that; neither could he remove him any way but by action, to the end the Church might be the more quiet in the mean time: * Neither did the King recover damages in his Quare impedit, at the Common Law. But the ſaid ſtatute (a) hath altered the Common Law in the caſes aforeſaid, as namely, Quod hoc, quod ſi pars rea accipiat de plenitudine Eccleſiæ per ſuum propriam præſentationem non propter illam plenitudinem remaneat loquela, dummodo breve infra tempus ſemeſtre impetretur, &c. And alſo hath provided remedy in other caſes, as by the ſaid Act appeareth.

F.N.B. 36. k. 143. 2. 35 E. 3. cap. 3. 13 R. 2. ca. 1. 4 H. 4. ca. 21. 1 H. 5. 19. * Li. 6. f. 51. Li. f. 19. 3 H. 6. Dam. 17. 34 H. 6. 28. 12 E. Champerty 9. 18 E. 3. 2. Temps E. 1. Quar. imp. 181.

(a) W. 2. ca. 5. 13 E. 1.

(b) And if the King do preſent to a Church, and his Clerk is admitted and inſtituted, yet before induction the King may appeal and revoke his preſentation. But regularly no man can be put out of poſſeſſion of his Advowſon, but by admiſſion and inſtitution upon an uſurpation by a preſentation to the Church, Cum aliquis jus præſentandi non habens præſentaverit, &c. and not by the collation of the Biſhop: (c) And therefore if the Biſhop collate without title, and his Clerk is inducted, this ſhall not put the rightful Patron out of poſſeſſion, for it ſhall be taken to be only proviſionally made for celebration of divine Service until the Patron do preſent; and therefore he is not driven to his Quare impedit, or Aſſiſe of Darreine præſentment in that caſe, but an uſurpation by collation ſhall take away the right of collation that is in another.

(b) 45 E. 3. 35. 38 E. 3. 4. 25 E. 3. 47. 13 El. Dy. 292. Reg. 302, &c. 18 El. Dy. 348. 14 E. 4. 2. 7 H. 4. 32. 31 E. 1. Quar. Imp. 185. W. 2. ubi ſupr.

(c) 17 E. 3. 64.

It is to be obſerved, that an uſurpation upon a preſentation ſhall not only put out of poſſeſſion him that hath right of preſentation, but right of collation alſo. Therefore at this day the Incumbent ſhall be removed in a Quare impedit, or Aſſiſe of Darreine præſentment, if there be not a plenarty by ſix months before the Teſte of the Writ; but then the Incumbent muſt be named in the Writ, or elſe he ſhall never be removed: yet at the Common Law, if the Ordinary refuſed to admit and inſtitute the Clerk of the Patron, or when any diſturbed him to preſent, ſo as he could not prefer his Clerk, he might have his Quare impedit, or Aſſiſe de Darreine preſentment; and if the Church were not full, have a writ to the Biſhop to admit his Clerk: but ſo odious was Simony in the Common Law, that before the Statute of W. 2. he recovered no damages. At the Common Law, if hanging the Quare impedit againſt the Ordinary for refuſing his Clerk, and before the Church were full, the Patron brought a Quare impedit againſt the Biſhop (and hanging the ſuit, the Biſhop admit and inſtitute a Clerk at the preſentation of another, in this caſe if judgment be given for the Patron againſt the Biſhop, the Patron ſhall have a writ to the Biſhop, and remove the incumbent that came in pendente lite by uſurpation, for pendente lite nihil innovetur, and therefore at the Common Law it was good policy to bring the Quare impedit againſt the Biſhop as ſpeedily as might be. And it is to be obſerved, that albeit the Clerk that comes in pendente lite, by uſurpation, ſhall be removed; yet if the rightfull Patron, being a ſtranger to the writ, preſent pendente lite, and his Clerk is admitted and inſtituted, he ſhall not be removed; for elſe by the bringing of ſuch Quare impedit againſt the Ordinary, the rightful Patron might be defeated of his Preſentation: and therefore ever after the Statute of Weſtm. 2. amongſt other things it was inquired ex Officio if the Church were full, and of whole preſentation, &c. and if the Plaintiff ſhould have a writ to the Biſhop, and his Clerk admitted, as in moſt caſes he ought, yet may the rightful Incumbent have his remedy by Law.

9 H. 6. 30. & 56. 19 H. 6. 68. 18 E. 2. Preſentment 20.

30 E. 3. Encumbent 10. 21 H. 7. 8. 2. & b. 9 El. Dyer 260. F.N.B. 32. 14 H. 8. 31. 19 E. 2. Dar. Preſ. 21. 10 E. 2. 17. 9 H. 6. 31. 30 E. 3. tit. Quar. imp. Stath. 46 E. 3. 15. 9 H. 8. 32, 36. 19 H. 6. 68 E. 5. E. 4. 115. 9 E. 4. 30.

And as it was good policy (as hath been ſaid) to bring a Quare impedit as ſpeedily as might be againſt the Biſhop, ſo it is good policy at this day to name the Biſhop in the Quare impedit, for then he ſhall not preſent by Laps. But ſeeing the Biſhop ſhall not preſent by Laps, becauſe he is named in the writ, what then after that the time be devolved to the Metropolitan, ſhall not he preſent by Laps becauſe he is not named? To this it is anſwered, that he ſhall not in that caſe preſent by Laps; for the Metropolitan ſhall never preſent or collate by Laps after ſix months, but when the immediate Ordinary might have collated by laps within the ſix months and had forborne his time. And ſo it is, if the time be devolved to the King

11 H. 4. 80.

for

for the firſt ſtep or beginning faileth, and in humane things, Quod non habet principium, non habet finem. And all theſe points were reſolved (*) in a Writ of Error brought by Richard Biſhop of London, and John Lancaſter againſt Anthony Lowe, upon a judgment given againſt them in a Quare impedit in the common pleas for the Church of Windebiſhe. But now let us hear what our Author will ſay unto us. (*) Mich. 3. Jacobi.

Sect. 649.

¶ Item, ſi Tenant in taile ad iſſue & ſoit diſſeiſie, & puis il releſſa per ſon fait tout ſon droit a le diſſeiſor, en teſt caſe nul droit de taile poit eſtre en le Tenant en taile, pur ceo que il avoit releas tout ſon droit. Et nul droit poit eſtre en iſſue en le taile durant le vie ſon pere. Et tiel droit del enderitance en le taile neſt pas tout outterment expire per force de tiel releas, &c. Ergo, il covient que tiel droit demurt en abeiance, ut ſupra, durant la vie le Tenant en taile, que releſſa, &c. & apres ſon deceaſe donque eſt tiel droit maintenant en ſon iſſue en fait, &c.

ALſo, if Tenant in tail hath iſſue and is diſſeiſed, and after he releaſeth by his Deed all his right to the Diſſeiſor. In this caſe no right of tail can be in the Tenant in tail, becauſe he hath releaſed all his right. And no right can be in the iſſue in tail during the life of his Father. And ſuch right of the Inheritance in the tail is not altogether expired by force of ſuch releaſe, &c. *Ergo*, it muſt needs be that ſuch right remain in abeiance, *ut ſupra*, during the life of Tenant in tail that releaſeth, &c. and after his deceaſe ſuch right preſently is in his iſſue in Deed, &c.

¶ Littleton having declared where a fee is in abeiance, and where a Freehold and fee is in abeiance by act in Law; and where a fee that is in abeiance may be charged; here he putteth two caſes where a right of an eſtate tail may be in abeiance by the act of the party; which are ſo clear and evident, as there needs no further proof or argument then Littleton hath juſtly and artificially made, albeit ſome objections of no weight have been made againſt it. If Tenant in tail of lands holden of the King be attainted of felony, and the King after offices ſeiſeth the ſame, the eſtate tail is in abeiance, there ſaid to be in ſuſpence. Pl. Com. fol. 562, 563. in Wallſinghams caſe. 14 E. 3. Diſcont. 9. 19 H. 6. 60. 29 Aſſ. p. Wallſinghams caſe, ubi ſupra.

¶ *Grant ſon eſtate, concedit ſtatum ſuum.* Vide Sect. 65, 521, 525, 526. 44 E. 3. 10. 14 Aſſ. 28. 43 Aſſ. 8. 3 H. 7. 9.

Deate or eſtate ſignifieth ſuch Inheritance, Freehold, term for years, Tenancy by Statute Merchant, Staple, Elegit or the like, as any man hath in lands or Tenements, &c. And by the grant of his eſtate, &c. as much as he can grant ſhall paſſe, as here by Littletons caſe appeareth. Tenant for life, the remainder in tail, the remainder to the right heirs of Tenant for life; Tenant for life grants totum ſtatum ſuum to a man & his heirs, both eſtates do paſſe. 44 Aſſ. 28. 49 E. 3. 16.

¶ *Right.* Jus ſive rectum (which Littleton often uſeth) ſignifieth properly, and ſpecially in Writs and pleadings, when an eſtate is turned to a right, as by Diſcontinuance, Diſſeiſin, &c. where it ſhall be ſaid, Quod jus deſcendit & non terra. But (right) doth alſo include the eſtate 26 H. 6. 4.

Sect. 650.

¶ En meſme le maner eſt, lou Tenant en taile granta tout ſon eſtate a un auter, en teſt cas le graunte nad eſtate forque pur terme de

IN the ſame manner it is where Tenant in tail grant all his eſtate to another; in this caſe the Grantee hath on eſtate but for term of life of the Te-

Vide Sect. 465. Pl. Com 484. Lib. 8. fol. 153. Althams caſe, 39 H. 6. 38.

eſtate in eſſe in conveyances; and therefore if Tenant in fee ſimple make a leaſe for years, and releaſe all his right in the land to the leſſee and his heirs, the woole eſtate in fee ſimple paſſeth.

And ſo commonly in fines, the right of the land includeth and paſſeth the ſtate of the land, as *A.* cognovit tenementa prædicta eſſe jus ipſius *B.* &c. And the Statute (a) ſaith, Jus ſuum defendere, (which is) ſtatum ſuum. And note that there is Jus recuperandi, jus intrandi, jus habendi, jus retinendi, jus percipiendi, jus poſſidendi.

(a) W. 2. cap. 3. Pl. Com. 484. & 487.

Title properly (as ſome ſay) is when a man hath a lawful cauſe of the entry into Lands whereof another is ſeiſed, for the which he can have no action, as title of condition, title of Mortmain, &c. But legally this word (Title) includeth a right alſo as you ſhall perceive in many places in Littleton: and title is the more general word, for every right is a title, but every title is not ſuch a right for which an action lieth; and therefore Titulus eſt juſta cauſa poſſidendi quod noſtrum eſt, and ſignifieth the means whereby a man cometh to land, as his title is by fine or by feoffment, &c. And when the Plaintiff in aſſiſe maketh himſelf a title, the Tenant may ſay, Veniat Aſſiſa ſuper titulum, which is as much to ſay, as upon the title which the Plaintiff hath made by that particular conveyance; Et dicitur titulus a tuendo, becauſe by it he holdeth and defendeth his land; and as by a releaſe of a right a title is releaſed, ſo by releaſe of a title a right is releaſed alſo. See more hereof in Fitzherbert and Brooks abridgements, in the title of Title.

Vide Sect. 429, 659. &c.

6 H. 7. 8. Althams caſe, ubi ſupra.

¶ *Intereſt.* Intereſſe is vulgarly taken for a Term or Chattle real, and more particularly for a future term; in which caſe it is ſaid in pleading, that he is poſſeſſed De intereſſe termini. But Ex vi termini, in legal underſtanding, it extendeth to eſtates, rights and titles, that a man hath of, in, to, or out of Lands; for he is truly ſaid to have an intereſt in them: and by the grant of totum intereſſe ſuum in ſuch land, as well reverſions as poſſeſſions in fee ſimple ſhall paſſe. And all theſe words ſingularly ſpoken are nomina collectiva, for by the grant of totum ſtatum ſuum in lands, all his eſtates therein paſſe, Et ſic de cæteris.

Pl. Com. 374. in Seignior Zouches caſe, & fol. 487. 448. in Nichols caſe.

¶ *Ne unques avera brieſe de waſte, &c.* So it is, if Tenant for life be, the remainder in tail, and he in the remainder releaſe to the Tenant for life, all his right and ſtate in the land. Hereby it is ſaid in our Books, that the eſtate of the leſſee is not inlarged; but the releaſe ſerveth to this purpoſe, to put the eſtate tail into abeiance, ſo as after that he is the remainder cannot have an action of waſte; yet in that caſe (ſaving reformation) the Leſſee for life hath an eſtate for the life of Tenant in tail expectant upon his own life. But if Tenant in fee releaſe to his Tenant for life all his right; yet he ſhall have an Action of waſte. And if Tenant in tail make a Leaſe for his own life, he ſhall have an action of waſte.

32 H. 8. Taile Br. 23. 35 H. 8. Grant. Br. 150. Vide 16. El. Dier. 325. b. Titulum.

43 Aſſ. p. 13. 41 E. 3. tit. Waſte. 83. 11 H. 4. 67. 13 H. 7. 10. Pl. Com. 482. Per Dier 27 H. 8. 20.

24 E. 3. 23.

F. N. B. 60 H. 4. 1 E. 3. Waſte 83. 42 E. 3. 18.

Vide le reverſion de le taile nest pas en le Tenant en taile, pur ceo que il a doit graunt tout ſon eſtate & ſon droit, &c. Et ſi le Tenant a que le graunt fuit fait fiſt waſt, le Tenant en le taile ne unque avera briefe de waſt, pur ceo que nul reverſion eſt en luy. Mes le reverſion & le inheritance de le taile, durant le vie le Tenant en le taile, eſt en abeiance, ceſt aſcavoir tantſolement en le remembrance, conſideration, & intelligence de la ley.

nant in tail, and the reverſion of the tail is not in the Tenant in tail, becauſe he hath granted all his eſtate and his right, &c. And if the Tenant to whom the grant was made make waſte, the Tenant in tail ſhall not have a Writ of waſte, for that no reverſion is in him: but the reverſion and inheritance of the tail, during the life of the Tenant in tail, is in abeiance, that is to ſay, onely in the remembrance, conſideration, and intelligence of the Law.

Sect. 651.

¶ ITem, ſi un Eveſque alien terres que ſont parcel de ſon Eveſquery, & devie, ceo eſt un diſcontinuance a ſon ſucceſſor, pur ceo que il ne poit enter, mes eſt mis a ſon briefe De ingreſſu ſine aſſenſu capituli.

ALSO, if a Biſhop alien lands which are parcel of his Biſhoprick, and die, this is a diſcontinuance to his ſucceſſor, becauſe he cannot enter, but is put to his Writ of *De ingreſſu ſine aſſenſu capituli.*

Of this ſufficient hath been ſaid (how the Law ſtandeth at this day) before in this Chapter.

Sect. 652.

¶ ITem, ſi un Deane alien terres queux il ad en droit de luy & ſon Chapiter, & mourust, ſon ſucceſſor poit enter. Mes ſi le Deane eſt ſole ſeiſie come en droit ſon Deanry, donque ſon alienation eſt diſcontinuance a ſon ſucceſſor, come eſt dit adevant.

ALSO, if a Dean alien lands which he hath in right of him and his Chapter, and dieth, his ſucceſſor may enter. But if the Dean be ſole ſeiſed as in right of his Deanry, his alienation is a diſcontinuance to his ſucceſſor, as is ſaid before.

¶ Hereof alſo that which was neceſſary is before ſaid in this Chapter, and Littletons own words are plain and evident. 22 E. 4. tit. Feoffments & fairs 29. 21 E. 4. 85. 86.

Sect. 653, 654, 655, & 656.

¶ ITem, peradventure aſcuns voilont arguer & dire, que ſi un Abbe & ſon Covent ſont ſeiſes en lour demeſne, come de, fee de certaine terres a eux & a lour ſucceſſors, &c. & Labbe ſans aſſent de ſon Covent alien meſmes les terres a un auter, & devie, ceo eſt un diſcontinuance a ſon ſucceſſor, &c.

ALSO, peradventure ſome will argue and ſay, that if an Abbot and his Covent be ſeiſed in their demeſne, as of fee, of certain lands to them and to their ſucceſſors, &c. and the Abbot without the aſſent of his Covent alien the ſame lands to another, and die, this is a diſcontinuance to his ſucceſſor, &c.

Sect. 654.

¶ PEr meſme le reaſon ils voilent dire, que lou un Dean & Chapiter ſont ſeiſies de certaine terre a eux & a lour ſucceſſors, ſi le Dean alien meſme la terre, &c.

BY the ſame reaſon they will ſay, that where a Dean and Chapter are ſeiſed of certain land to them and their ſucceſſors, if the death alien the ſame lands,

ſeo

teo serroit un discontinuance a son successour ilsint que son successour ne poit enter, &c. A teo poit estre respondue que il y ad grand diversitie perenter les deux cases.

&c. this shall be a discontinuance to his successor, so as his successor cannot enter, &c. To this it may be answered, that there is a great diversity between these two cases.

Sect 655.

¶ CAr quand un Abbe & le Covent sont seisies, uncore sils sont disseisie, Labbe avera assie en son noisme demesne, sans noismer le Covent, &c. Et si aleun voile suer Præcipe quod reddat, &c. de meismes les terres quand ils sueront en le maine Labbe & Covent, il covient que tiel action real soit sue envers Labbe solement sans noisme la Covent, pur teo que touts sont mozts persons en la ley lozsque Labbe que est le soveraigne, &c. Et teo est per cause del soveraignty: Car autrement il serroit lozsque come un de les auters Voignes ou le Covēt, &c.

FOr when an Abbot, and the Covent are seised, yet if they be disseised, the Abbot shall have an assise in his own name without naming the Covent, &c. And if any will sue a *Præcipe quod reddat, &c.* of the same lands when they were in the hands of the Abbot and Covent, it behoveth that such action real be sued against the Abbot onely without naming the Covent, because they are all dead persons in law, but the Abbot who is the soveraign, &c. and this is by reason of the soveraignty; For otherwise he should be but as one of the other Monks of the Covent, &c.

Sect. 656.

¶ MEs un Deane & le Chapiter ne sont mozts persons en la ley, &c. car chescun de eux poit aver action per soy en divers cases. Et de tiels terres ou tenements que le Deane & Chapiter ont en common, &c. sils soient disseisies, le Deane & Chapiter averont un assise, & nemy le Deane sole, &c. Et si auter voile aver action real de tiels terres ou tenements envers le Deane, &c. il covient de sur envers le Deane & Chapiter, & nemy envers le Deane sole, &c. & issint il

BUt Dean and Chapter are not dead persons in Law, &c. for every of them may have an action by himself in divers cases. And of such lands or tenements as the Dean and Chapter have in common, &c. if they be disseised, the Dean and Chapter shall have an assise, and not the Dean alone, &c. And if another will have an action real for such lands or tenements against the Dean, &c. he must sue against the Dean and Chapter, and not against the Dean alone, &c. and so there appeareth a

appiert

appiert grand diverſitie perenter les deux cales, &c.

great diverſity between the two caſes, &c.

¶ Theſe are apparent and need no explanation. Having in the 655. Section mention is made of the Præcipe quod reddat, which in this place is intended of a real action whereby land is demanded, and is ſo called of the words in every ſuch writ.

Vide Sect. 200.

And the reaſon of this diverſity between the caſe of the Abbot and Covent, and Dean and Chapter is; for that (as hath been ſaid) the Monks are regular, and civilly dead, and the Chapter are ſecular and perſons able and capable in Law. But by the policy of Law the Abbot himſelf (here termed the Soveraign) albeit he be a Monk and regular, yet hath he capacity and ability to ſue and be ſued, to enfeoff, give, demiſe and leaſe to others, and to purchaſe and take from others; for otherwiſe they which right have, ſhould not have their lawful remedy, nor the houſe remedy againſt any other that did them wrong; neither could the houſe without ſuch capacity and ability ſtand. And the Covent have no other ability or capacity, but only to aſſent to Eſtates made to the Abbot, and to Eſtates made by him, which for neceſſities ſake, though they be civilly dead, they may do.

8 E. 3. 27. 11 H. 4. 84. 21 E. 4. 84. 11 H. 7. 12.

Sect. 657.

¶ ITem, ſi le Maſter dun Hoſpital diſcontinue certeine terre de ſon Hoſpital, ſon Succeſſor ne poit enter, mes eſt mis a ſon briefe de ingreſſu ſine aſſenſu confratrum & conſororum, &c. Et touts tiels brieves pleinment appearont en le Regiſter, &c.

ALſo, if the Maſter of an Hoſpital ſhall diſcontinue certain Land of his Hoſpital, his Succeſſor cannot enter, but is put to his writ of *De ingreſſu ſine aſſenſu confratrum & conſororum, &c.* And all ſuch writs fully appear in the Regiſter, &c.

¶ This muſt alſo be underſtood, where the Maſter of the Hoſpital hath ſole and diſtinct poſſeſſions, and not where he and his brethren are ſeiſed, and as a body politick aggregate of many. And here Littleton (as divers times before) doth cite the Regiſter.

Sect. 658.

¶ ITem, ſi terra ſoit leſſe a un home pur terme de ſa vie, le remainder a un auter en le taile, ſavant le reverſion al Leſſor, & puis celuy en le remainder diſſeiſiſt le tenant a terme de vie, & fait un feoffment a un auter en fee, & puis morust ſans iſſue, & le Tenant a terme de vie morust, il ſemble en ceſt cas, que celuy en la reverſion bien poit enter ſur le Feoffee, pur ceo que celuy en la remainder que fiſt le feoffment, ne fuit unque ſeiſie en le taile per force de meſme le remainder, &c.

ALſo, if land be let to a man for term of his life, the remainder to another in tail, ſaving the reverſion of the Leſſor, and after he in the remainder diſſeiſeth the Tenant for term of life, and maketh a Feoffment to another in fee, and after dieth without iſſue, and the Tenant for life dieth; it ſeemeth in this caſe that he in the reverſion may well enter upon the Feoffee, becauſe he in the remainder which made the Feoffment was never ſeiſed in tail by force of the ſame remainder, &c.

Here

Vid. Sect.637,592,596,597, 601,640,641. Vide Sect. 637.

¶ HEre it appeareth, That albeit the Feoffor hath an Eſtate Tail in him expectant upon an Eſtate for life, yet his Feoffment worketh no Diſcontinuance. Wherein Littleton doth add a limitation to that which in this Chapter he had generally ſaid, viz. That an Eſtate tail cannot be diſcontinued; but where he that maketh the Diſcontinuance was once ſeiſed by force of the Tail; which is to be underſtood, when he is ſeiſed of the Freehold and inheritance of the Eſtate in tail, and not where he is ſeiſed of a Remainder or a Reverſion expectant upon a Freehold: which Freehold (as often hath been ſaid) is ever much reſpected in Law.

CAP. 12. Of Remitter: *Sect.* 659.

¶ HEre our Author having next before treated of a Diſcontinuance, very aptly beginneth this Chapter with a deſcription of a Remitter.

¶ *Remitter eſt un antient terme en la Ley*, and is derived of the Latine Verb Remittere, which hath two ſignifications, either, To reſtore and ſet up again, or to ceaſe. Therefore a Remitter is an operation in Law upon the meeting of an antient right remediable, and a later ſtate in one perſon where there is no folly in him, whereby the ancient right is reſtored and ſet up again, and the now defeaſible Eſtate ceaſed and vaniſhed away. And the reaſon hereof is, for that the Law preferred a ſure and conſtant right, though it be little, before a great Eſtate by wrong and defeaſible; and therefore the firſt and more antient is the moſt ſure and more worthy title; Quod prius eſt, verius eſt, & quod prius eſt tempore, potius eſt jure: (a) Therefore many Books inſtead of Remitter, ſay, That he is en ſon primer eſtate, or en ſon melior droit, or En ſon melior Eſtate, or the like.

(a) 35 Aſſ. Pl 4. 35 Aſſ. Pl.11. 26 E.3.69. 11H.4. 50.2. 41 E.3.17.b. & tit. Remit.11. 6 E. 3. 17.

¶ *Lou home a deux Titles.* Here this word (Titles) is taken in the largeſt ſenſe, including rights, for being properly taken, (b) as in caſe of a condition, mortmain,

(b) Vid. Sect.429. & 659, &c. 34 H.8. tit. Remitt. Br.50. 44 E.3. Attaint. 22. 38 Aſſ. Pl. 7.

¶ REmitter en un antient terme en la Ley, & eſt lou home ad deux titles a terres ou tenits, ſ. un pluis antiēt title, & un auter title pluis darrein, & ſil vient a la terre per le pluis darreine title; uncore la Ley luy adjudgera eins per force del pluis eigne title, pur ceo que le pluis eigne title eſt le pluis ſure title et pluis deigne title. Et donque quand home eſt adjudge eins per force de ſon eigne title, ceo eſt a luy dit un remitter, pur ceo que la Ley luy mitter deſire eins en la terre per le pluis eigne & ſure title. Sicome Tenant en le taile diſcontinua la taile, & puis il diſſeiſiſt ſ. Diſcontinuē, & iſſint mourust ſeiſie, per que les tenements diſcendont a ſon iſſue ou Coſine, inheritable

REmitter is an antient term in the Law, and is where a man hath two titles to lands or tenements, *viz.* one a more antient title, and another a more latter title; and if he comes to the land by a latter title; yet the Law will adjudge him in by force of the elder title, becauſe the elder title is the more ſure and more worthy title. And then when a man is adjudged in by force of his elder title, this is ſaid a Remitter in him, for that the Law doth admit him to be in the land by the elder and ſurer Title. As if Tenant in Tail diſcontinue the Tail, and after he diſſeiſeth his Diſcontinuee and ſo dieth ſeiſed, whereby the tenements deſcend to his iſſue or Coſine inheritable by

per

per force de le tail: en cest case, ceo est a luy a que les Tenements discendont q̄ ad droit per force de le tail un remitter a le tail, pur ceo que la Ley luy mitte & adjudge destre eins per force de le tail, q̄ est son eigne title; car sil serroit ens per force de le discent, donques le discontinuée puisoit aver Briefe de Entre sur disseisin en le Per envers luy, & recoveroit les tenements & ses dammages, &c. Mes entant que il est eins en son remitter per force de le tail, le title & le interest le discontinuée est tout ousterment anient & defeat, &c.

force of the tail: In this case this is to him to whom the Tenements descend, who hath right by force of the tail, a Remitter to the tail, because the Law shall put and adjudge him to be in by force of the tail, which is his elder title; for if he should be in by force of the discent, then the discontinuee might have a Writ of Entry *Sur Disseisin* in the *Per* against him, and should recover the tenements and his damages, &c. but inasmuch as he is in his remitt' by force of this tail, the title & interest of the discontinuee is quite taken away and defeated, &c.

assent to a Ravisher, and the like, there is no Remitter wrought unto them, because these are but bare titles of entry, for the which no Action is given, but a Remitter must be to a precedent right. And Littleton in this Chapter putteth all his cases only of Remitters, to Rights remediable.

¶ *Et un auter Title pluis darreigne*, &c. Here is to be observed, that an Estate must work a Remitter to an antient Right, for albeit two Rights do descend, there can be no Remitter, because one Right cannot work a Remitter to another: for regularly to every Remitter there be two incidents, viz. an antient Right, and a defeasible estate of Freehold coming together. 10 H. 6. 59. 78. 43. tit. Entre Cong. 3 Pl. Com. 2. 6. a.

¶ *Le pluis eigne Title est le pluis sure Title, & pluis digne Title.* So as the eldest title is worthily (as hath been said) preferred, because it is the more sure and more worthy.

¶ *Sicome Tenant en taile discontinue le taile*, &c. Here our Author according to his accustomed manner, to illustrate his description, putteth an example of a Remitter, where the Law preferreth the antient Estate by Right, before a new Estate defeasible. And this Remitter is wrought by an Estate cast upon the Issue in tail by discent, which is an Act in Law; and the discent of the Land in possession, and the Right of Estate tail descend together. 19 H. 6. 61, 62.

¶ *Est tout ousterment anient & defeat.* &c. Here be two things implied and to be understood: First, That this Remitter is wrought in this case by operation of Law upon the freehold in Law descended without any entry. Secondly, That the Law so favoureth a Remitter, (being a restoring to Right) that if the discontinuee be an Infant or a Feme Covert, and Tenant in tail after a Discontinuance disseise them, and die seised, the Issue shall be remitted without any respect of the privileges of Infancy or Coverture; and therefore our Author said, Le title & interest le Discontinuee est tout ousterment anient & defeat. 11 E. 4. 1.

¶ *Donques le Discontinuee*, &c. Here is a reason added in this particular case, that stretch not other cases of Remitter, for in this case, and many other, the Law that abhorreth Suits of vexation, both avoid circuity of action, for the rule is, Circuitus est evitandus. 11 E. 3. 3. tit. Ass. 85. 4 E. 4. 35. 11 R. 2 Bar. 242. 30 E. 3. 8. 6 E. 3. 7. 19 H. 6. 63. 24 E. 3. 70. 14 H. 4. 27. 10 H. 7. 11. F. N. B. Meine & Waste.

Sect. 660.

ITem, si l' Tenant en tail enfeoffa son fits

ALso, if Tenant in tail Infeoffe his Sonne in Fee,

¶ OUR Author having put one example where both the Rights discend together, now

Temps E. 1. Remit. 13. 11 E. 3. Age. 5. 38 E. 3. 24. 40 E. 3. 43. 21 E. 4. 19.

now puts another example where the Iſſue in tail claimeth by purchaſe in the life of Tenant in taile, and the antient right deſcendeth after to the ſame Iſſue.

¶ *Car coment que tiel Heire fuit de pleine age al temps del mort, &c.* The reaſon is, becauſe no folly can be adjudged in the Infant at the time of the acceptance of the Feoffment. Therefore the Law reſpecteth the time of the feoffment, and not the time of the death: and albeit he might have waved the eſtate which he had by the feoffment at his full age; yet here it appeareth, that the right of the eſtate taile deſcended to him either within age, or of full age, ſhall work a Remitter in him; for that the waver of the ſtate ſhould have been to his loſs and prejudice.

27 H.8. c.10. of Uſes. 35 H.8.Dy. 54.b.46. E. 6. ib. 77.t. & 2 P. & M.116. 2. & 2 P.& M.129.191. 28 H. 8. 23. b. Pl.Com. Amy Townſhends caſe, fol. 34. H. 8. tit. Remit. Br. 49.

Since Littleton wrote, and after the Statute of 27 H. 8. cap. 10. if Tenant in taile make a feoffment in Fee to the uſe of his Iſſue being within age, and his Heirs, and dieth, and the right of the Eſtate Taile deſcend to the Iſſue being within age; yet he is not remitted, becauſe the Statute executeth the poſſeſſion in ſuch plite, manner and form as the uſe was limited: Et ſic de ſimilibus, ſo as there is a great change of Remitters ſince Littleton wrote.

Pl. Com. ubi ſupra.

But if the Iſſue in Taile in that caſe wave the poſſeſſion, and bring a Formedon in the deſcender, and recover againſt the Feoffee, he ſhall thereby be remitted to the Eſtate Taile; otherwiſe the Lands may be ſo incumbred, as the iſſue in Taile ſhould be at a great inconvenience: but if no Formedon be brought, if that iſſue dieth, his iſſue ſhall be remitted, becauſe a ſtate in fee ſimple at the Common Law deſcendeth unto him.

¶ *Eſteant de pleine age il charge per ſon fait*

en fee, ou ſon Coſine inheritable per force de le taile, lequel fits ou coſin al temps de feoffment eſt deins age, & puis le tenant en le taile debia, & celuy a que le feoffement fuit fait en ſon heire per force de le Taile, ceo eſt un remitter al heire en le taile a que le feoffment fuit fait. Car coment que durant la vie le Tenant en le taile que fiſt le feoffement, tiel heire ſerra adjudge eins per force de le feoffement, uncore apres la mort le Tenant en le taile, l'heire ſerra adjudge eins per force de le taile, & nemy per force de le feoffement. Car coment que tiel heire fuit de pleine age al temps de le mort de le Tenant en le Taile que fiſt le Feoffment, ceo ne fait aſcun matter, ſi l'heire fuit deins age al temps del feoffement fait a luy. Et ſi tiel heire eſteant deins age al temps de tiel Feoffement, vient al pleine age vivant le Tenant en le taile, que fiſt le Feoffement, et illint eſteant de pleine age, il charge per ſon fait meſme la Terre ove

Or his Coſine inheritable by force of the Taile, which Son or Coſine at the time of the feoffment is within age, and after the Tenant in taile dieth, and he to whom the Feoffment was made in his heir by force of the Taile, this is a remitter to the heir in taile to whom the Feoffment was made: for albeit that during the life of the Tenant in Taile who made the Feoffment, ſuch heir ſhall be adjudged in by force of the feoffment, yet after the death of Tenant in taile, the heir ſhall be adjudged in by force of the taile, and not by force of the feoffment. For although ſuch heir were of full age at the time of the death of the Tenant in taile who made the feoffment, this makes no matter, if the heir were within age at the time of the feoffment made unto him. And if ſuch heir being within age at the time of ſuch feoffment cometh to full age, living the tenant in taile that made the feoffment, & ſo being of full age, he charges by his deed

un

un common de paſture, ou oue un rent charge, & puis le tenant en le taile moruſt, ore il ſemble q̃ le terre eſt diſcharge del common, & de le rent, pur ceo que le heire eſt eins de auter eſtate en la terre, que il fuit al temps de le charge fait, entant que il eſt en ſon remitter per force d̃ le taile, & illint leſtate, que il avoit al temps de le charge, eſt outterment defeat, &c.

the ſame Land with a common of paſture, or with a rent charge, and after the Tenant in tail dieth; now it ſeemeth that the Land is diſcharged of the common, and of the rent, for that the heir is in of another Eſtate in the Land than he was at the time of the charge made, in as much as he is in his Remitter by force of the tail, and ſo the eſtate which he had at the time of the charge is utterly defeated, &c.

&c. The reaſon is, becauſe the Grantor had not any right of the eſtate in tail in him at the time of the grant, but only the eſtate in fee ſimple gained by the Frofkment, which (as Littleton here ſaith) is wholly defeated. And the ſtate of the Land out of which the rent iſſued being defeated, the rent is defeated alſo.

But if Tenant in tail make a leaſe for life, whereby he gaineth a new reverſion in fee, ſo long as Tenant for life liveth, and he granteth a rent charge out of the Reverſion, and after Tenant for life dieth, whereby the Grantor becometh Tenant in tail again, and the Reverſion in fee defeated, yet becauſe the Grantor had a right of the entail in him, cloathed with a defeaſible fee ſimple, the rent charge remaineth good againſt him, but not againſt his iſſue; 11 H. 7. 21. Edriches caſe.

which diverſity is worthy of obſervation, for it openeth the reaſon of many Caſes.

If the heir apparent of the diſſeiſee diſſeiſe the diſſeiſor, and grant a rent charge, and then the diſſeiſee dieth, the Grantor ſhall hold it diſcharged, for there a new right of entry doth deſcend unto him, and therefore he is remitted.

So if the Father diſſeiſe the Grand-father, and granteth a rent charge, and dieth; now is the entry of the Grand-father taken away, if after the Grand-father dieth, the Son is remitted, and he ſhall avoid the charge. So as where our Author putteth his example of a fee tail, it holdeth alſo in caſe of a fee ſimple.

¶ *Un common de paſture, ou un rent charge*, &c. Here Littleton putteth his caſe of things granted out of the land. But what if the Iſſue at full age by bond indented, or bond poll, make a leaſe for years of the land, and after by the death of Tenant in tail he is remitted, whether ſhall he avoid the leaſe or not? And it is holden he ſhall not, becauſe it is made of the land it ſelf, and the land is become by the leaſe in another plight, than it is in the caſe of a grant of a rent charge, which I gather out of our Authors own words in another place. 33 H. 8. Dyer 3. b. Vide Sect. 289.

¶ *La terre eſt diſcharge del rent*, &c. Littleton doth add theſe two words materially, becauſe the whole grant is not thereby avoided, but the land diſcharged of the rent charge, for the Grantee ſhall have notwithſtanding a Writ of Annuity and charge the perſon of the Grantor. Lib. 2. f. 3. b. Wards caſe.

Sect 661.

¶ ITem, un principal cauſe pur que tiel heire en les caſes evandits, & auters caſes ſemblables, ſerra dit en ſon remitter, eſt pur ceo q̃ il ny ad aſcun perſon envers que il poit ſuer ſon briefe de

ALſo, a principal cauſe why ſuch heir in the caſes aforeſaid, and other like caſes, ſhall be ſaid in his Remitter, is for that there is not any perſon againſt whom he may ſue his writ of *Formedon*. For againſt

¶ *UN principall cauſe pur que, &c.* And of this opinion is (d) Littleton in our Books. (d) 12 E. 4. 20. 41 E. 3. 18. 11 H. 4. 38.

¶ *Il nad aſcun perſon envers que & ſi come il avoit loialment recover meſme la terre vers un auter*, &c. Here it is to be underſtood, that regularly a man ſhall not be remitted to a right

Lib. 3. f. 3. the Marqueſs of Winchesters caſe.

right remedileſſe, for the which he can have no Action, for Littleton here ſaith, that there is no perſon againſt whom the Iſſue, when he cometh to the land without folly, may bring his Action; and ſaith alſo, that this is the principal cauſe of the Remitter; for neither an Action without a Right, nor a Right without an Action can make a Remitter. As if Tenant in tail ſuffer a common recovery in which there is Errour, and after Tenant in tail diſſeiſeth the recovery and dieth; here the Iſſue in tail hath an Action, viz. a Writ of Error, but as long as the recovery remaineth in force, he hath no Right; and therefore in that caſe there is no Remitter.

Fozmedon. Car envers luy meſme il ne poit ſuer, et il ne poit ſuer envers nul auter, car nul auter eſt Tenant del franktenement, en pur tel cauſe la ley luy adjudge eins en ſon remitter, ſ. en tiel plite, ſicome il avoit loialment recover meſme la terre envers un auter, &c.

himſelf he cannot ſue, and he cannot ſue againſt any other, for none other is Tenant of the freehold; and for this cauſe the Law doth adjudge him in his Remitter, s. in ſuch plite, as if he had lawfully recovered the ſame Land againſt another, &c.

If B. purchaſe Advowſon, and ſuffereth an uſurpation, and ſix months to paſs, and after the uſurper granteth the Advowſon to B. and his heirs, B. dieth, his heir is not remitted, becauſe his Right to the Advowſon was remedileſs, viz. a Right without an Action.

5 H. 7. 35.

Tenant in tail of a Mannor whereunto an Advowſon is appendant, maketh a diſcontinuance, the Diſcontinuee granteth the Advowſon to Tenant in tail and his heirs, Tenant in tail dieth, the Iſſue is not remitted to the Advowſon, becauſe the Iſſue had no Action to recover the Advowſon before he recovered the Mannor whereunto the Advowſon was appendant. And ſo it is of all other Inheritances, regardant, appendant, or appurtenant, a man ſhall never be remitted to any of them before he recontinueth the Mannor, &c. whereunto they are regardant, appendant, or belonging.

Britton, f. 126.

Car nul ne poit claimer droit en les appurtenances ne en les acceſſoris, qui nul droit ad en le principal.

(o) Brack. li. 4. fo. 243. b.
8 E. 2. Quare Imp. 199.
2 H. 4. 18. 14 H. 6. 15, 16.
8 H. 6. 17. 33 H. 6. 15.
F. N. B. 25. & 36. F.
24 E. 3. Diſcont. 16.
33 H. 3. Dyer. 48. b.

(o) Item excipi poteſt, &c. quamvis jus habeat in tenemento & pertinentiis, primo recuperare debet tenementum ad quod pertinet advocatio, & tunc poſtea præſentet & non ante, & de hac materia in Rotulo de Termino Sancto Michaelis, anno Regis Henrici tertii in comitatu Norff. de Thoma Bardolfe.

But on the other ſide, if a man be remitted to the principal, he ſhall alſo be remitted to the appendant or acceſſory, albeit he were ſevered by the Diſcontinuee, or other wrong-doer. And therefore if Tenant in tail be of a Mannor, whereunto an Advowſon is appendant, and enfeoffeth A. of the Mannor, with the appurtenances, A. re-enfeoffeth the Tenant in tail, ſaving to himſelf the Advowſon, Tenant in tail dieth, his Iſſue being remitted to the Mannor, is conſequently remitted to the Advowſon, although at that time it was ſevered from the Mannor. So it is in the ſame caſe, if Tenant in tail had been diſſeiſed, and the Diſſeiſor ſuffer an uſurpation, if the Diſſeiſee enter into the Mannor, he is alſo remitted to the Advowſon.

Sect. 662.

¶ Item, ſi terre ſoit taile a un home & a ſa feme, & a les heires de lour deux corps engendres, les queux ont iſſue file, & le feme deby & le baron prent auter feme, & ad iſſue un auter file, & diſcontinue le taile, & puis diſſeiſe le diſcontinuee & iſſint morust ſeiſie, ore le terre diſcen-

ALſo, if Land be entailed to a man and to his wife, and to the Heirs of their two bodies begotten, who have Iſſue a daughter, and the wife dieth, and the husband taketh another wife, and hath Iſſue another daughter, and diſcontinue the tail, and after he diſſeiſeth the Diſcontinuee and

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dera a les deux files. Et en ceſt caſe quant al eigne file, que eſt inheritable per force de le taile, ceo neſt un Remitter forſque de le moiety. Et quant al auter moiety, el eſt mis a ſuer ſon action de Formedon envers ſa ſoer. Car en ceſt cas les deux ſoers ne ſont pas Tenants en parcenary, mes ſont Tenants en common pur ceo q̄ ils ſont eins per divers titles. Car lun ſoer eſt eins en ſon Remitter per force de le taile quant a ceo q̄ a luy affiert, & lauter ſoer eſt eins quant a ceo que a luy affiert en fee ſimple per le diſcent ſon pier, &c.

ſo die ſeiſed, now the land ſhall deſcend to the two daughters. And in this caſe, as to the eldeſt daughter, who is inheritable by force of the tail, this is no Remitter, but of the moiety. And as to the other moiety, ſhe is put to ſue her action of *Formedon* againſt her ſiſter. For in this caſe the two ſiſters are not Tenants in parcenary, but they are Tenants in common, for that they are in by divers titles. For the one ſiſter is in her Remitter by force of the entail, as to that which to her belongeth; and the other ſiſter is in as to that to her belongeth in fee ſimple by the diſcent of her Father, &c.

¶ *Ceo neſt remitter forſque pur le moietie, &c.* Here Littleton putteth a caſe where the iſſue in tail ſhall be remitted to a moiety, becauſe but a moiety of the land deſcended unto her, and there cannot be any Remitter, for ſo much as cometh to the iſſue by diſcent, or by any other means without his folly; and in this caſe by act in Law the Coparcenary is defeated, for the daughters are in by ſeveral Titles, viz. the eldeſt daughter is Tenant in Tail per formam doni, by the remitter of the one moiety, and the youngeſt ſeiſed in fee ſimple by diſcent of the other moiety, againſt whom the other ſiſter in Tail may have her Formedon. 44 E.3.27. 19 H.6.59.

Sect. 663.

¶ EN meſme le manner eſt, ſi Tenant en taile enfeoffa ſon heire apparant en le taile eſteant l'heire deins age, & un auter jointenant en fee, & le tenāt in taile mozuſt, oze l' heir ē taile eſt ē ſon remitter quāt a lun moiety, & quāt a lauter moietie il eſt mis a ſon briefe de Formedon, &c.

IN the ſame manner it is, if Tenant in tail infeoffe his heir apparant in tail, (the Heir being within age) and another Joyntenant in fee, and the Tenant in tail dieth; now the heir in tail is in his Remitter as to the one moiety, & as to the other moiety he is put to his Writ of *Formedon*, &c.

¶ *LE heire, &c. eſt en ſon Remitter quant a lun moiety, &c.* Hereby it appeareth, that albeit Joyntenants be ſeiſed pro indiviſo per my & per tout, yet each of them hath in judgment of Law but a right to a moiety; and therefore the iſſue in tail in this caſe is remitted but to a moiety, and is Tenant in Common, but with the other Feoffee. And ſo it is, if the Diſcontinuee after the death of Tenant in tail make a Charter of feoffment to the iſſue in tail being within age who hath right, and to a ſtranger in fee, and make livery to the Infant in name of both: the iſſue is not remitted to the whole, but to the half; for firſt he taketh the fee ſimple, and after the Remitter is wrought by operation of Law, and therefore can remit him but to a moiety. But of this ſufficient hath been ſaid in the Chapter of Joyntenants. Vide Sect. 288.

Sect. 664.

¶ Item, ſi teſt en taile enfeoffa ſon heire apparant, le heire eſteant de pleine age al temps de feoffment, & puis le teſt en taile mozuſt, ceo neſt remitter al heir, pur ceo que il fuit ſa folly, que il eſteant de pleine age voile prender tiel feoffment, &c. Mes tiel folly ne poit eſtre adjudge en le heire eſteant deins age al temps del feoffment, &c.

ALſo, if Tenant in tail infeoffe his heir apparent, the heir being of full age at the time of the feoffment, and after Tenant in tail dieth; this is no Remitter to the heir, becauſe it was his folly, that being of full age he would take ſuch feoffment, &c. but ſuch folly cannot be adjudged in the heir being within age at the time of the feoffment, &c.

¶ By this feoffment albeit the heir apparent hath ſome benefit in the life of his Anceſtor, yet is he thereby (beſides his own) ſubject during his life to all charges and incumbrances made or ſuffered by his Anceſtor. And therefore our Author ſaith well, Que il fuit ſon folly que il eſteant de pleine age voile prender reel feoffment, but folly ſhall not be judged in one within age in reſpect of his tender years, and want of experience.

40 E. 3. 44. 18 E. 4. 25.

Sect. 665.

¶ HEre Littleton putteth a Caſe where the husband within age by the intermarriage may be remitted, albeit he gaineth but a Freehold during the Coverture en auter droit.

Alſo here is to be obſerved, that the Eſtate which doth in this caſe worke the Remitter, could not have continuance after the deceaſe of the wife. And ſo on the other ſide, if the husband make a diſcontinuance, and take back an Eſtate to him and his wife, during the life of the husband; this is a Remitter to the wife preſently, albeit the Eſtate is not by the limitation to have continuance after the deceaſe of the husband, which caſe is proved by the reaſon of the caſe which our Author here putteth. And here our Author obſerveth the diverſity when the husband is within age, and when he is of full age; for when he is within age, no folly can be adjudged in him, as in this Chapter hath been often ſaid.

¶ Item, ſi tenant en taile enfeoffa un feme en fee & mozuſt, et ſon iſſue deins age prent meſme la feme a feme, ceo eſt un remitt al enfant deins age, & la feme donq̃ nad rien, pur ceo que le baron et ſa feme ſoit forſque come un perſon en ley. Et en ceſt cas le baron ne poit ſuer briefe de Formedon, ſinon que il voilloit ſuer enders luy meſm, le quel ſerroit enconvenient, & pur ceſt cauſe la ley adjudgera l' heire en ſon remitter, pur ceo que nul folly poit eſtr adjudge en luy, eſteãt

ALſo, if Tenant in Tail infeoffe a woman in fee, and dyeth, and his iſſue within age taketh the ſame woman to wife; this is a Remitter to the Infant within age, and the wife then hath nothing, for that the husband and his wife are but as one perſon in Law. And in this caſe the husband cannot ſue a writ of *Formedon*, unleſs he will ſue againſt himſelf, which ſhould be inconvenient; and for this caſe the Law adjudgeth the heir in his Remitter, for that no folly can be adjudged in him being deins

deins age al temps delpouſels, &c. Et ſi le heire ſoit en ſon remitter per force de le taile, il enſuiſt per reaſon, que la feme nad riens, &c. Car entant que le baron & ſa feme ſont comen un perſon, la terre ne poit eſtre ſebere per moieties, & pur cel cauſe le baron eſt en ſon remitter de lentiertie: Mes auterment eſt ſi tiel heire fuit de pleine age al temps de les eſpouſels, car donques le heire nad riens forſque en droit ſa feme, &c.

within age at the time of the Eſpouſals, &c. And if the Heir be in his remitter by force of the entail, it followeth by reaſon that the wife hath nothing, &c. for in as much as the husband and wife be as one perſon the land cannot be parted by moieties, and for this cauſe the husband is in his remitter of the whole. But otherwiſe it is if ſuch Heir were of full age at the time of eſpouſals, for then the Heir hath nothing but in right of his wife, &c.

Here is alſo to be noted, that preſently by the marriage within age, the husband is remitted, and the Freehold and Inheritance of the wife baniſhed clean away.

Priſt meſme la feme al feme. Here it is good to be ſeen what things are given to the husband by marriage. Firſt it appeareth here by Littleton, that if a man taketh to wife a woman ſeiſed in fee (f) he gaineth by the intermarriage an Eſtate of Freehold in her right, which eſtate is ſufficient to worke a Remitter, and yet the eſtate which the husband gaineth dependeth upon uncertainty, and conſiſteth in priuity; (g) for if the wife be attainted of Felony, the Lord by Eſcheat ſhall enter and put out the husband; otherwiſe it is if the Felony be committed after iſſue had. Alſo if the husband be attainted of Felony, the King

(f) 13 H.4.6. Stanf. l.3. b. 18 E.4.33. 11 H.7.19. 10 H.6. 11. 7 H.6.9. b.

Vide Sect. 58.

(g) 4 Aſſ. P.4. 4 E.3. Aſſ.166.

gaineth no Freehold but a pernancy of the profits during the Coverture, and the Freehold remaineth in the wife. (h) Secondly, if ſhe were poſſeſſed of a Term for years, yet he is poſſeſſed in her right, but he hath power to diſpoſe thereof by Grant or Deviſe; and if he be outlawed or attainted, they are gifts in Law.

(h) Pl. Com. f.260. b. Dame Hales caſe. 30 Aſſ.5. 38 H.6 23. 21 E.4.35. 7 E.4.6. 7 H.7.2. 16 H.6.11.

(*) Upon an Execution againſt the husband for his debt, the Sheriff may ſell the Term during her life: but the husband can make no diſpoſition thereof by his laſt will. Alſo if he make no diſpoſition or forfeiture of it in his life, yet it is a gift in Law unto him if he do ſurvive his wife; but if he make no diſpoſition and die before his wife, ſhe ſhall have it again; and the ſame Law is of Eſtates by Statute Merchants, Statute Staple, Elegit, Wardſhips and other Chattels reals in poſſeſſion.

(*) Mich. 26 & 27. El. inter Amnor & Lodington in briefe de error adjudge in both Courts lib.8. fol.96. Mat. Mannings caſe, 7 H.6. fol.2.

But if the husband charge the Chattel real of his wife, it ſhall not bind the wife if ſhe ſurvive him.

If a feme ſole be poſſeſſed of a Chattel real, and be thereof diſpoſſeſſed, and then taketh husband, and the wife dieth, and the husband ſurvideth, this right is not given to the husband by the intermarriage, but the executors or adminiſtrators of the wife ſhall have it; ſo it is if the wife habe but a poſſibility.

Vide Sect. 58.

In the ſame manner it is, if the wife be poſſeſſed of Chattels reals in auter droit, as Executrix or Adminiſtratrix, or as Gardein in Socage, &c. and ſhe intermarrieth, the Law maketh no gift of them to the husband, although he ſurvived her. In the ſame manner, if a woman grant a Term to her own uſe, taketh husband, and dieth, the husband ſurviving ſhall not habe this truſt, but the Executors or Adminiſtrators of the wife, (i) for it conſiſteth in priuity; and ſo hath it been reſolved by the Juſtices. Chattels reals conſiſting merly in Iuſter, the husband ſhall not have by the intermarriage, unleſſe he recovereth them in the life of the wife, albeit he ſurvive the wife, as a Writ of Right of Ward, a valore maritagii, a forfeiture of marriage, and the like, whereunto the wife was intituled before the marriage.

Pl. Com. fol.294. Osbornes caſe, and there f.292. b. Wrotesleys caſe.

(i) Paſch.32. El. in Cancellar. in Wallthams caſe. Hill.38. El. in Cancel. in Waterhouſes caſe. Wrotesleys caſe, ubi ſup.

But Chattels reals being of a mixt nature, viz. partly in poſſeſſion, and partly in Action, which happen during the Coverture, the husband ſhall habe by the intermarriage, if he ſurvive his wife, albeit he reduceth them not into poſſeſſion in her life time: but if the wife ſurvideth him, ſhe ſhall have them. As if the husband be ſeiſed of Rent ſervice, Charge, or Deck, in the right of his wife, the Rent become due during the coverture, the wife dieth, the husband ſhall habe the arrerages; but if the wife ſurvive the husband, ſhe ſhall have them, and not the Executors of the husband. So it is of an Advowſon, if the Church become void during the Coverture, (k) he may habe a Quare impedit in his own name, as ſome hold: but the wife ſhall habe it if ſhe ſurvive him, and the husband, if he ſurvive her. Et ſic de ſimilibus.

13 E.3. Quare imp.57. 14 H.4.12. 38 E.35. b. 50 E.3.13. 19 H.6.11. F.N.B. 21. 22 H.6. 25. 29 E.3.40. 11 R.2. Account.42. 12 R.2. Briefe 839. 5 E.3. Execut.99.

(k) 50 E.3.13. 28 H.6.5. 7 H.7.2.

But if the arrerages had become due, or the Church had fallen void before the marriage, there they were meerly in action before the marriage; and therefore the Husband should not have them by the Common Law, although he survived her. And so it is of reliefes, Mutatis mutandis. (l) But now by the Statute of 32 H.8. cap. 37. if the husband survive the Wife, he shall have the arrerages as well incurred before the marriage, as after.

But the marriage is an absolute gift of all Chattels personals in possession in her own right, whether the Husband survive the Wife or no; but if they be in action, as debts by Obligation, contract, or otherwise, the Husband shall not have them unlesse he and his Wife recover them. And of personal goods en auter droit, as Executrix or Administratrix, &c. the marriage is no gift of them to the Husband, although he survive his Wife.

(m) If any Estray happen within the Manor of the Wife, if the Husband die before seisure the Wife shall have it, for that the property was not in the Wife before seisure.

But as to personal goods there is a diversity worthy of observation, between a property in personal goods (as is aforesaid) and a bare possession; for if personal goods be bailed to a Feme, or if she find goods, or if goods come to her hand as Executrix to a Bailiff, and taketh a Husband, this bare possession is not given to the Husband, but the Action of detinue must be brought against the Husband and Wife.

But now let us hear Littleton.

¶ *Le quel serra inconvenient.* This argument ab inconvenienti, our Author hath used in many places.

26 E.3.64. 10 H.6.11. F.N.B. 121. 22 H.6.25.

(l) Lib.4. fol.51. in Ognels case. Hil.17. El.Rot.157. in Com Banco, Sharps case. 21 E.4.4. 21 H.7.29. 11 H.7.4.26 H.8.7. 43 E.3.10. 3 H.6.23.37. 4 H.6.5. 14 E.2. Det.73. 5 E.2. ib.169. 30 E.3. 48 E.3.12. 12 R.2. Bre.638. 639. 16 E.4.8. 16 E.6. Bre. 939.

(m) 43 E.3.8. v. 10 H.6.11. 39 E.17.

Vide Sect.87.&c.

Sect. 666.

¶ ITem, si Feme seisie de certaine terre en fee prent baron, le quel aliena mesme la terre a un auter en Fee, la lienee lessa mesme la terre al baron & sa Feme pur terme de lour deux vies, savant le reversion al Lessor & a ses heires, en cest cas la Feme est eins en son Remitter, & el est seisie en Fait en son demesne come de Fee, sicome el fuit advenant pur ceo que le repriser del Estate serra adjudge en Ley le Fait le Baron, & nemy le Fait la feme, issint nul folly poit estre adjudge en la feme, que est covert en tiel Case, & en cest case le Lessor nad rien en le reversion, pur ceo que la Feme est seisie en Fee, &c.

ALso, if a woman seised of certain Land in fee, taketh a Husband, who alieneth the same Land to another in fee, the Alienee letteth the same Land to the Husband and Wife for Term of their two lives, saving the reversion to the Lessor and to his Heirs: In this case the Wife is in her Remitter, and she is seised in Deed in her Demesne as of Fee, as she was before, because the taking back of the estate shall be adjudged in Law the fact of the Husband, and not the fact of the Wife, so no folly can be adjudged in the Wife which is Covert in such case. And in this case the Lessor hath nothing in the Reversion, for that the Wife is seised in fee, &c.

21 E.3 26. 29 E.3.43. 41 E. Remit.11. 19.E.3. Remit.14. 35 Ass.12. 38 E.3.24. 39 E.3.29.30. 41 E.3.17. 46 E.3.20. B.26. B.3.69. Vid. Sect.676. 11 R.2. Remit.12.44 E.3.17.

¶ *A feme est son Remitter.* By this it appeareth, That albeit there be no moieties between Husband and Wife, yet this is a remitter, presently, and standeth not upon the survivor of the Wife, as some have thought; for if the estate gained by intermarriage be a sufficient Estate to work a Remitter, à fortiori, an estate made to the Husband and Wife shall work a Remitter in the Wife. And so it is if Tenant in tail infeoffe his Issue being within age, and his Wife in Fee, and dieth, this is a Remitter to the Issue presently, by the death of Tenant in tail, though some have thought the contrary.

Here

Here also it appeareth, That no folly in this case can be adjudged in a feme Covert, for the taking back of the estate shall be adjudged in Law the act of the Husband. The Marquesse of Winchester case, ubi supr.

Note in the case of the Feme Covert, she may be Remitted in the life of the Discontinuor, because she hath a present right but in the case of Tenant in tail, the issue cannot be remitted in the life of the Discontinuor, because the Issue hath no right until his decease.

Sect. 667.

¶ MEs en ceo case si le Lessour voile suer Action de Waste vers le Baron & sa Feme, pur ceo que le Baron avoit fait Waste, le Baron ne poit barrer le lessor pur monstre ceo, que le reprisel del estate fait a luy & a son feme, fuit un Remitter a sa feme, pur ceo que le Baron est estoppe adire ceo que est encounter ẽ feoffment, & son reprisel demesne del estate pur terme de vie a luy & a sa femẽ. Et uncore le Lessor nad un Reversion, pur ceo que le fee simple est en la feme. Et issint home poit veier un matter en ceo case, que home serra estoppe per un matter en fait, coment q̃ nul Escripture soit fait per Fait indent ou auterment.

But in this Case if the Lessor will sue an Action of Waste against the husband and his wife, for that the Husband hath commit ted waste, the husband cannot bar the Lessor by shewing this, that the taking back of the Estate to him and to his wife, was a Remitter to his wife, because the husband is stopped to say that which is against his own Feoffment and taking back of the Estate for term of life to him and to his Wife. And yet the Lessor hath no reversion, for that the Fee simple is in the Wife. And so a man may see one thing in this case, That a man shall be stopped by matter in Fact, though there be no Writing by Deed indented, or otherwise.

¶ *Pur ceo que baron est estoppe adire, &c.*

¶ *Estoppe* cometh of the French word Estoupe from whence the English word Stopped: and it is called an Estoppel or Conclusion, because a mans own Act or acceptance stoppeth or closeth up his mouth to alledge or plead the truth: and Littletons case here proveth this description. Lib.2. fol.4.b. Goddards case. Vide Sect.41.693, 695,679.

Touching estoppels, which is an excellent and curious kind of learning, it is to be observed, that there be three kinds of Estoppels, viz. By matter of Record, by matter in writing, and by matter in Pais.

(a) By matter of Record, viz. By Letters Patents, Fine, Recovery, Pleading, taking of continuance, Confession, Imparlance, Warrant of Attorney, Admittance. (a) 43 Ass.29. 8 H.4.7,8. 22 Ass.54. 15 E.3. Estop.239. 4 E. ib.133.

(b) By matter in writing, as by Deed indented, by making of an Acquitance by Deed indented, or Deed poll, (c) by Deseasance by Deed indented or Deed poll. (b) 4 H.4.1. 8 H.7.6. 13 H.7.24. 15 E.4.28. 41 E.3. Estop.12. 12 R.2. ib.12. (c) 8 R.2. Estop.282. 33 H.6.18, 3 H.6.16. 16 H.7.5. 34 H.6.19. 14 H.4.29.

By matter in Pais, as by Livery, by Entry, by acceptance of Rent, by partition: and by acceptance of an Estate, as here in the case that Littleton putteth, whereof Littleton maketh a special observation, that a man shall be Estopped by matter in the Country, without any writing.

To make the Reader more careful of the learning of Estoppels, these few rules, amongst others, are to be known.

(d) First, that every Estoppel ought to be reciprocal, that is, to bind both parties, and this is the reason, that regularly a stranger shall neither take advantage, nor be bound by the Estoppel. (e) Privies in blood, as the heir, Privies in Estate, as the Feoffee, Lessee, &c. Privies in Law, as the Lords by escheat: Tenant by the Courtesie, Tenant in Dower, the Incumbent (d) 33 H.6.29.30. 30 H.6 2. 10 E.3. Estop.240. 33 Ass.11. 30 Ass.51. 14 Ass.9. 8 E.4.1. (e) 8 Ass.33. Br. Fines 73. 8 H.6.17. 12 E.3.35. 38 E.3.1. 20 E.3.Estop.187.

Incumbent of a Benefice, and others that come under by act in Law, or in the Post, shall be bound and take advantage of Estoppels, and that a Rebutter is a kind of Estoppel.

(f) Secondly, that every Estoppel, because it concludeth a man to alledge the truth, must be certain to every intent, and not to be taken by argument or inference.

(g) Thirdly, every Estoppel ought to be a precise affirmation of that which maketh the Estoppel, and not be spoken impersonally; as if it be said, Ut dicitur, quia impersonalitas non concludit, nec ligat: impersonalis dicitur, quia sine persona. (h) Neither doth a recital conclude, because it is no direct affirmation.

(i) Fourthly, a matter alledged that is neither traversable, nor material, shall not estoppe.

(k) Fifthly, regularly a man shall not be concluded by acceptance or the like, before his Title accrued.

(l) Sixthly, Estoppel against Estoppel doth put the matter at large.

(m) Seventhly, matters alledged by way of supposal in Count shall not conclude after Non-suit; otherwise it is after judgment given and after Non-suit, albeit the supposal in the Count shall not conclude, yet the Bar, Title, Replication, or other pleading of either party, which is precisely alledged, shall conclude after Non-suit; and hereby are the Books reconciled.

Eighthly, where the verity is apparent in the same record, there the adverse party shall not be estopped to take advantage of the truth, for he cannot be estopped to alledge the truth, when the truth appeareth of Record. (n) If a Fine be levied without any original, it is voidable, but not void; but if an Original be brought, and a Retrax entred, and after that a Concord is made, or a fine levied, this is void, in respect the verity appeareth of Record. (o) An Impropriation is made after the death of an incumbent, to a Bishop and his Successors, the Bishop by indenture demiseth the Personage for forty years, to begin after the death of the Incumbent, the Dean and Chapter confirmeth it, the Incumbent dieth, the Demise shall not conclude, for that it appeareth that he had nothing in the Impropriation till after the death of the Incumbent.

(p) Ninthly, Where the Record of the Estoppel doth run to the disability or legitimation of the person, there all strangers shall take benefit of that Record, as Outlawry, Excommengment, Prohesition, Attainder of Præmunire, of Felony, &c. Bastardy, Mulierty, and shall conclude the party, though they be strangers to the Record, Vide Littleton in cap. Villenage, Sect. 196, 197, &c. But of a Record concerning the name of the person, quality or addition, no stranger shall take advantage, because he shall not be bound by it. But Nota, Reader, That in case of the Mulierty, prima facie, an estranger shall take benefit of it, &c. But yet because he may be a Mulier by the Ecclesiastical Law, and a Bastard by the Common Law; therefore against such a certificate pleaded, the adverse party may alledge the special matter, and confesse the certificate of the Bishop according to the Ecclesiastical Law, and alledge further the special matter according to the Common Law, whereunto the adverse party must answer; and so are the Books that treat of this matter, to be reconciled. But now let us return to Littleton.

(f) 21 E.4.4. 23 Ass.14. 17 H.6. Estop. 273. 18 E.3.30. 7 H.7.6. & 16.
(g) 46 E.3.23. 29 Ass.38. Pl. Com.398.
(h) 35 H.6 33. 46 E.3.12. 49 E.3.14. 8 Ass. 3.45 Ass.5. 5 E. Dier 196. 11 El. ib.280. 9 H 6.60.
(i) 5 E.4.8 E.4.19. 10 E.4.12. 22 E.4.38. 32 Ass.9.35 H.6.20.
(k) 33 H.6.16. 4 E.3.22. 6 H.4.7. 31 E.3. Gard.155. F.N.B. 142. E.
(l) 12 H.7.4. 20 H.6.29. 3 H.4.9. 41 E.3.4. 11 H.4.30.
(m) 2 R.3.14. 2 R.2. Estoppel.20. 40 E.3.21. 12 E.4.13. 18 E.3.31.35. 44 E.3.35. 17 Ass.27. 45 E.3.2. 21 H 7.24.5 E.4 7. 7 E.4. 19. 3 E.4.8 1.4 E.3.54. 7 E.6. Br. Estop. 162. 11 H.4.30. 30 E.3. 21. 31 Ass.14 14.
(n) 37 Ass.17. 38 H.6.12. 5 El. Dier 222.
(o) El. Dier 244.
(p) Bract. f.420. 26 Ass.64. 39 Ass.10. 11 H.4.84. 7 H 6. 32 Ass.5. 11 E.8. Estop.229. 21 E.3.39. 19 R.2. Estop.282. 2 E.2. ib. 23. 33 E.3. Estop. Stath. Lestat. de 9 H.6. cap.11. 30 H.6.2. Doct. & Stud.69. 34 H.6.39. 18 E.4.1. b. 10 E.4.16.

Sect. 668.

¶ *A Feme pria destre receive & soit receive.* Receipt, Receptio, cometh of the Latine Verb Recipere, so called because the wife upon the default of her husband, is received as a feme sole alone, without her husband, to defend her right, and it is also called Defensio juris: and in this case the wife may be received by the (a) Statute, and yet (b) ancient Authors who wrote before the Statute, do speak of a kind of Receit at the Common Law. The Civilians call Receit, Admissionem tertii pro suo interesse, which more properly is resembled to the Receit of him in the reversion, or remainder, that is no party to the Writ.

20 E.1. Defensio juris.

(a) W.2. cap.3.
(b) Bract. f. 393. Mir. Lib.3. cap. Exceptions.

¶ Mes si en action de Waste le baron fait default a le graund distresse, & la feme pria destre receive & soit receive, el monstra bien tout le matter, & coment el est en son Remitter, & el barrera le Lessor de son Action, &c.

But if in the Action of Waste the husband make default to the grand Distresse, and the Wife pray to be received, and is received, she may well shew the whole matter, and how she is in her remitter, and she shall bar the Lessor of his Action, &c.

Sect.

Sect. 669.

¶ Car en chescun cas lou feme eſt receive p default ſon baron, el pledera e avera m ladvantage en plee pledant, come el fuiſſoit feme ſole, &c. Et coment que lalienee fiſt le leas al baron e a ſa feme, Pleit endent, uncore ceo eſt remitter a la feme. Et auxy coment que lalienee rendiſt meſme l' terre al baron e a ſa feme p fine p terme de lour vies, uncore ceo eſt un remitter al feme, pur ceo que feme covert que prent eſtate per fine, ne ſerra my examine per les Juſtices, &c.

FOR in every Caſe where the Wife is received for default of her Husband, ſhe ſhall plead and have the ſame advantage in pleading, as ſhe were a woman ſole, &c. and albeit that the Alienee made the leaſe to the husband and wife by Deed indented, yet this is a Remitter to the wife: and alſo albeit the Alienee rendereth the ſame land to the husband and his wife by Fine for term of their lives, yet this is a Remitter to the wife, becauſe a Feme covert which takes an eſtate by Fine ſhall not be examined by Juſtices, &c.

¶ *Come el fuiſſoit feme ſole, &c.* In this Reaſon four things are to be underſtood.

Firſt, when a feme covert is received, that ſhe ſhall plead as if ſhe were ſole. And this is regularly true, yet holdeth not in all caſes. (c) For if a Feme covert be received in an Aſſiſe, and plead a Record and fail, therefore ſhe ſhall not be adjudged a Diſſeiſoreſs as ſhe ſhould be if ſhe were ſole. &c. (c) 37 Aſſ. 1.

So if a feme covert only levy by a fine executory, and a ſcire facias is brought againſt her and her husband, if ſhe be received upon the default of her husband, ſhe ſhall bar the Tenants, which if ſhe had been ſole ſhe could not do, and in ſome other caſes. 17 Aſſ. 17. 29 E. 3. 43. 5 E. 3. Vouch. 178.

Secondly, that though the Eſtate taken back be by deed indented, yet that ſhall not binder the Remitter in caſe of a Feme covert or an Infant.

Thirdly, that though it be by fine ſurrender'd, yet that ſhall not hinder the Remitter, becauſe a Feme covert is not to be examined upon any Fine, but when ſhe and her husband paſs ſome Eſtate or intereſt, or releaſe her right by a fine of Land or Tenements.

Fourthly, if the husband levy a Fine of his wifes Lands, and the Cauſes grant and render the land to the husband and wife, although the wife be not party to the original, nor to the Conuſance, and therefore ſhe ought not by the Law to take any preſent Eſtate but by way of remainder only; yet here it is proved by Littleton, that the grant and ſurrender de facto to the wife in præſenti is not void, for then it could not work a Remitter, but voidable by writ of Error, and that avoidable Eſtate doth work a Remitter.

¶ *Ne ſerra my examine per les Juſtices, &c.* The examination of a Feme Covert ought to be ſecret, and the effect is to examine her whether ſhe be content to levy a Fine of ſuch lands (naming them particularly and diſtinctly, and the ſtate that paſſeth by the Fine) of her own voluntary free will, and not by threats, menaces, or any other compulſory means. Trin. 27 El. Inter Owen & Morgan. Rot. 276. in Bocco Com. Lib. 2. fo. 5. the Marquis of Wincheſters Caſe. 7 E. 3. 64. 13 E. 3. Voucher, 119.

Sect. 670.

¶ ET hic nota, que quand aſcun choſe paſſera de la feme que eſt covert de baron per force

AND here note, that when any thing ſhall paſs from the wife which is covert of a husband by dur

dun fine, ſicome le baron & la feme̅ ſeſont un conuſance de droit a un auter, &c. ou ſeſoyent un grant & render a un auter, ou releſſent per fine a auter, & ſic de ſimilibus, lou le droit del feme paſſeroit del feme p force de meſme le fine, en touts tiels caſes la fem̅ ſerra examine devaunt q̄ la fine ſoit accept pur ceo q̄ tiels fines concluderont tiels feme̅s coverts a touts jours, &c. Mes lou riens eſt move en le fine forſq̄ tantſolement que le baron & la feme preignont eſtate per force de meſme le fine, ceo ne concluder la feme, pur ceo que en tiel cas el jammes ne ſerra my examine, &c.

force of a fine: As if the husband and wife make a conuſance of right to another, &c. or make a grant and render to another, or releaſe by fine unto another, *& ſic de ſimilibus*, where the right of the wife ſhall paſs from the wife by force of the ſame fine; in all ſuch caſes the wife ſhall be examined before that the fine be taken, becauſe that ſuch fines ſhall conclude ſuch Femes coverts for ever. But where nothing is moved in the fine, but only that the husband and wife do take an eſtate by force of the ſaid fine; this ſhall not conclude the wife, for that in ſuch caſe ſhe ſhall not be at all examined, &c.

¶ *Quant aſcun choſe paſſera de la Feme covert, &c. per force dun fine, &c.*

(d) 15 E.4.28. 34 E.3. 31. 42 E.6. 3 H.6. 32. 20 E.3. tit. Cui in vita 10. (*) 29 E.3.43. 46 E.3.5.

And of this opinion is (d) Littleton in our Books.

* Therefore if the husband and wife be Tenants in ſpecial tail, and they leby a Fine at the Common Law, and after the husband and wife take back an Eſtate to them and their heirs; in this caſe the Eſtate tail is not barred; and yet againſt a Fine levied by her ſelf ſhe cannot be remitted, becauſe thereupon ſhe was examined; but in that caſe, if the Land deſcend to her iſſue, ſhe ſhall be remitted.

Sect. 671.

¶ Item, ſi Tenant en taile diſcontinue le taile, & ad iſſue file, & mourſt, et la file eſteant de pleine age prent baron, &c. le diſcontinue fait un releas de ceo al baron & a ſa feme pur terme de lour vies, ceo eſt un Remitter al feme, & la feme eſt eins per force de le taile, Cauſa qua ſupra.

ALſo, if Tenant in tail diſcontinue the tail, and hath iſſue a daughter and dieth, and the daughter being of full age taketh husband, and the Diſcontinuee make a releaſe of this to the husband and wife for term of their lives; this is a Remitter to the wife, and the wife is in by force of the tail, *Cauſa qua ſupra.*

¶ *Et la file eſteant de plein age prent baron, &c.* Here it appeareth that her full age when ſhe took Baron is not material, but her coverture at the taking back of the Eſtate. And ſo note a diverſity between a Remitter and a Diſcent. For if a woman be diſſeiſed, and being of full age taketh husband, and then the Diſſeiſor dieth ſeiſed; this Diſcent ſhall bind the wife, albeit ſhe was Covert when the Diſcent was caſt, becauſe ſhe was of full age when ſhe took husband, as appeareth before in the Chapter of Diſcents. But albeit the wife that hath an ancient right, and being of full age taketh a husband, and the Diſcontinuee letteth the land to the husband and wife for their lives, this is a Remitter to the wife. For Remitters to ancient rights are favoured in Law.

Sect.

Sect. 672.

¶ ITem, ſi terre ſoit done a le baron & a ſa feme, a aver & tener a eux & a les heires de lour deux corps engendres, & puis l'baron aliena la terre en fee, & repient eſtate a luy & a ſa feſm pur terme de lour deux vies, en ceſt cas il eſt remitter en fait a le baron & a ſa feme maugre l'baron. Car il ne poit eſtre un remitter en ceſt cas a la feſm, ſinon que ſoit un remitter a la Baron, pur ceo que le baron & ſa feme ſont tout un meſme perſon en ley, coment q̄ le baron eſt eſtopper de claymer. Et pur ceo, ceo eſt un remitter en luy encounter ſon alienation & ſon repriſel demeſne, come eſt dit adebant.

ALſo, if land be given to the husband and to his wife, to have and to hold to them and to the heirs of their two bodies begotten, and after the husband alien the land in fee, and take back an eſtate to him, and to his wife for term of their two lives; in this caſe this is a Remitter in deed to the husband and to his wife, maugre the huſband. For it cannot be a Remitter in this caſe to the wife, unleſs it be a Remitter to the husband, becauſe the husband and wife are all one ſame perſon in Law, though the husband be ſtopped to claim it. And therefore this is a Remitter againſt his own alienation and repriſal, as is ſaid before.

¶ HEre it appeareth that the husband againſt his own alienation, if he had taken the eſtate to him alone, could not have been remitted. But when the eſtate is made to the husband and wife, albeit they be but one perſon in Law, and no moieties between them, yet for that the wife cannot be remitted in this caſe, unleſs the husband be remitted alſo; and for that Remitters, as hath been often ſaid, are favoured in Law, becauſe thereby the more antient and better Rights are reſtored again; therefore in this caſe, in judgement of Law, both husband and wife are remitted, which is worthy of great obſervation.

Sect. 673.

¶ ITem, ſi terre ſoit done a un feme en tail, le remainder a un auter en tail, le remainder a le tierce en tail, le remainder al quart en fee, & la feſm prent baron, & le baron diſcontinua le terre en fee, per cel diſcontinuance touts les remainders ſon diſcontinues. Car ſi la feſm debiaſt ſans Iſſue, ceux en le remainder naverunt aſcun remedie forſque de ſuer lour briefs de Formedon en le remainder

ALſo, if land be given to a woman in tail, the remainder to another in tail, the remainder to the third in tail, the remainder to the fourth in fee, and the woman taketh husband, and the husband diſcontinue the land in fee; by this Diſcontinuance all the remainders are diſcontinued. For if the wife die without Iſſue, they in the remainder ſhall not have any remedy but to ſue their Writs of *Formedon* in the remainder, when quand

quand il avient a lour temps. Mes ſi apres tiel diſcontinuance, eſtate ſoit fait a le baron & ſa feme pur terme de lour deux vies, ou pur terme dauter vie, ou auter eſtate, &c. pur ceo que ceo eſt un remitter al feme, ceo eſt auxy un remitter a touts ceux en le remainder. Car apres ceo que la feme que eſt en ſon remitter morust ſans iſſue ceux en le remainder poyent enter, &c. ſans aſcun action ſuer, &c. En meſme le maner eſt de ceux que ount lay reverſion apres tiel tailes.

it comes to their times. But if after ſuch diſcontinuance, an eſtate be made to the husband and wife for terme of their two lives, or for terme of another mans life, or other eſtate, &c, for that this is a remitter to the wife, this is alſo a remitter to all them in the remainder. For after that the wife which is in her remitter be dead without iſſue, they in the remainder may enter, *&c.* without any action ſuing, *&c.* In the ſame manner is it of thoſe which have the reverſion after ſuch entails.

41 E. 3. 17. 41 Aſſ. 1. 36 Aſſ. p. 4.

¶ Littleton having ſpoken of Remitters to the iſſue in tail, who is privy in blood, and to the wife who is privy in perſon; now he ſpeaketh of Remitters to them in reverſion or remainder expectant, upon an eſtate tail who are privy in eſtate. And this caſe proveth the wife is remitted preſently; for the equity of the Law requireth, that as the diſcontinuance of the eſtate in tail, is a diſcontinuance of the reverſion or remainder, ſo that the Remitter to the eſtate in tail ſhould be a Remitter to them in the reverſion or remainder.

44 Aſſ. p. 15. 44 E. 3. 30.

Tenant for life, the remainder to A. in tail; the remainder to B. in fee, Tenant for life is diſſeiſed, a collateral Anceſtor of A. releaſeth with warranty and dieth, whereby the eſtate tail is barred; the Tenant for life re-entreth, the diſſeiſor hath an eſtate in fee ſimple determinable upon the ſtate tail, and the remainder of B. is revеſted in him; and ſo note in this caſe, the eſtate for life, and the remainder in fee are revеſted and remitted, and an eſtate of inheritance left in the diſſeiſor. If a fine be levied ſur grant & render to one for life or in tail, the remainder in fee, if Tenant for life, or in tail, execute the eſtate for life or in tail, this is an execution of the remainder.

20 E. 3. Aid. 29.

Vide Pl. Com. 489. Nicholas caſe, & fol. 553. in Walſingham caſe. 17 Eliz. Dier 344. 25 E. 3. 48. tit. Reſceit 28. 49 E. 3. 16. (a) Seignior Staffords caſe, lib. 8. fol. 76. b. (b) Chomley's caſe, l. 2. 53. 7 R. 2 Aide le Roy. 61. 22 E. 3. 7.

A gift in tail is made to B. the remainder to C. in fee, B. diſcontinueth and taketh back an eſtate in tail, the remainder in fee to the King by deed inrolled; Tenant in tail dieth, his iſſue is remitted, and conſequently the remainder, as Littleton here ſaith; and the diverſity is (a) between an act in Law, for that may divеſt an eſtate out of the King, and a tortious act or entry; or a falſe and feigned recovery againſt Tenant for life or in tail, which ſhall never divеſt any eſtate, remainder or reverſion out of the King. (b) But a recovery by good title againſt Tenant for life, or in tail, where the remainder is to the King by defeaſible title, ſhall divеſt the remainder out of the King, and reſtore and remit the right owners.

Sect. 674, 675.

¶ *Feint & faux action.* 1. Actio ficta & falſa. But hereof Littleton ſpeaketh himſelf in this Chapter.

¶ *Quod ei deforceat*, is a Writ that is given by (c) Statute to any Tenant for life, or in tail, upon a recovery by default againſt them in a Præcipe, and lieth againſt the

(c) W. cap. 4.

¶ Item, ſi home leſſa un meaſe a un feme pur terme d' ſa vie, ſavant l' reverſion al leſſour, & puis un fuiſt un feint & faux action envers la feme, & recoveraſt le meaſe envers luy per default, iſſint que

Alſo, if a man let a houſe to a woman for term of her life, ſaving the reverſion to the Leſſor, and after one ſue a feigned and falſe Action againſt the woman, and recovereth the houſe againſt her by default; ſo as the

la

la feme poit aver enbers luy un Quod ei deforceat, ſolonque le Statute de Weſtm. 2. oꝛe le reverſion le leſſoꝛ eſt diſcontinue, iſſint que il ne poit aver aſcun action de Waſt. Mes en ceſt caſe ſi la feme prent baron & celuy q̄ recoveraſt leſſa le meaſe al baron & a ſa feme pur term de lour deux vies, la feme eſt eins en ſon Remitter per force del primer leaſe.

woman may have againſt him a *Quod ei deforceat*, according to the Statute of Weſtm. 2. now the reverſion of the Leſſor is diſcontinued, ſo that he cannot have an Action of Waſte. But in this caſe if the woman take husband, and he which recovereth let the houſe to the husband and his wife for term of their two lives, the wife is in her Remitter by force of the firſt leaſe.

Sect. 675.

¶ ET ſi le baron & ſa feme ſont Waſt, l'primer Leſſoꝛ avera enbers eux b̄e de Waſt, pur ceo que entant que la feme eſt en ſon Remitter, il eſt remiſe a ſon reverſion. Mes ſemble en ceſt cas ſi celuy que recoveraſt per l'faux action, voile poꝛter auter b̄e de Waſt enbers le baron & ſa feme, le baron nad auter remedy enbers luy mes de faire default a la graund diſtres, &c. & cauſer la feme deſtre receive, & de pleder cel matter enbers le ſecōd Leſſoꝛ, & monſtrer coment l'action per que il recoveraſt fuit faux & feint & ley &c. iſſint l'feſm̄ poit luy barret, &c.

AND if the husband & wife make waſte, the firſt Leſſor ſhall have a writ of Waſte againſt them, for that inaſmuch as the wife is in her Remitter, he is remitted to his reverſion. But it ſeemeth in this caſe, if he that recovereth by the falſe action will bring another writ of Waſte againſt the husband & his wife, the husband hath no other remedy againſt him but to make default to the grand diſtreſs, *&c.* & cauſe the wife to be received, & to plead this matter againſt the ſecond Leſſor, & ſhew how the action whereby he recovered was falſe and fained in law, &c. ſo the wife may bar him.

Recoveroꝛ and his heirs, in which caſe the particular Tenant was without remedy at the Common Law, becauſe he could not have a Writ of Right. And it is called a quod ei deforceat, foꝛ that they are part of the woꝛds of that Writ, viz. Præcipe A. quod &c. reddat B. unum meſuagium, &c. quod clamat eſſe jus & maritagium ſuum, & quod idem A. ei injuſtè deforceat. Bracton, lib. 4. 367. Fleta, lib. 5. cap. 22. & lib. 6. cap. 14. 7 E. 3. 62. F.N.B. 155.

¶ *Recoveraſt*, &c. *per default*: There hath been a queſtion in our books upon theſe woꝛds (by default) as foꝛ example, whether a recovery had by default in an action of Waſte againſt Tenant in Dower, oꝛ by the courteſie, a quod ei deforceat lieth by the ſaid Statute. And divers hold opinion, that in that caſe no quod ei deforceat, lieth, foꝛ that judgement is not given by default; foꝛ notwithſtanding the default, there goeth out a writ to inquire De vaſto facto, & quod vaſtum prædictus A. (le defendant) fecit. Yea the Defendant may give evidence, and the Juroꝛs may find foꝛ the Defendant, that no Waſte was done: as in the aſſiſe albeit it be awarded by default, yet may the Tenant give evidence, and the Recognitors of the Aſſiſe may find foꝛ the Tenant; and thereforꝛe in thoſe caſes, the Defendant oꝛ Tenant Non amittit per defaultam, as the Statute and Littleton ſpeaketh, and they cite F.N.B. in the point. W. 2. cap. 4. F. N. B. fol. 155. E.

Secondly, they hold, that a quod ei deforceat lieth where the Tenant can have no remedy by attaint; but in this caſe (ſay they) an attaint doth lie. 2 H. 4. 2. 21 H. 6. 16. 4 E. 3. 3. 3 H. 6. 29. 22 E. 3. 19.

Thirdly, they hold, that in an Action of Waſte, although

though it be brought against a Tenant in Dower, or Tenant by the Courtesie that have a freehold, yet the damages are the principal, for they were recoverable against Tenant in Dower, and by the Courtesie by the Common Law; and the Statute of Glocester gave the place wasted but for a penalty, so as the nature of the Action (say they) remaineth still to be personal, for that the damages are the principal; (d) and in proof hereof they cite divers authorities in Law. And if two bring an Action of Waste, the release of one of them is a good bar against the other; (e) and so resolved by the whole Court: which proveth (say they) that the damages are the principal; for if the land were the principal, the release of one of them should not bar the other, no more than in an assise, a writ of Ward, and Ejectione firmæ, &c.

(d) 34 H. 6. 7. 40 E. 3. 37. & 38. 3.

(e) 9 H. 5. 15.

30 H. 6. tit. Bar 59.

Lastly, they say, that in Actions where damages are to be recovered, and the land is the principal, the Demandant never cometh to damages, and yet shall recover them: but in an Action of Waste, the Plaintiff cometh to his damage; and if the damages be the principal, then clearly no Quod ei deforceat lieth.

Others do hold the contrary; and as to the first they say, that albeit that in the Writ of Waste Judgement is not only given upon the default, yet the default is the principal, and the cause of awarding of the writ to inquire of the Waste as an incident thereunto, and the Law alwaies hath respect to the first and principal cause, and therefore upon such a recovery (*) a writ of Deceit lieth, and that writ lieth not, but where the recovery is by default. So in an Action of Waste against the husband and wife, upon the default of the husband, the wife shall be received, and yet the Statute there speaketh also per defaltam. So upon such a Recovery in Waste against the Baron and Feme by default, the wife shall have a Cui in vita by the Statute, and it speaketh where the Recovery is per defaltam. And albeit the Defendant may give in evidence, if he knoweth it, yet when he makes default, the Law presumeth he knoweth not of it, and it may be that he in truth knew not of it; and therefore it is reason, that seeing the Statute, that is a beneficial Statute, hath given it him, that he be admitted to his quod ei deforceat, in which writ the truth and right shall be tryed. And so it is of a Recovery by default in an assise, albeit the Recognitors of the assise give a verdict, a quod ei deforceat lyeth. And all this as to this point was resolved by the whole Court of Common Pleas, and so the doubt in 41 E. 3. 8. well resolved. Nota, if Tenant for life make default, after default, and he in the reversion is received and plead to Issue, and it is found by verdict for the Demandant, the default and the verdict are causes of the Judgement, and yet that Tenant shall have a quod ei deforceat.

(*) 17 E. 3. 58. 29 E. 3. 42. F.N.B. 98. b. 12 H. 4. 4. 19 E. 2. Disceit 56. W. 2. cap. 3. 3 H. 4. fol. 1.

W. 2. cap. 13. 9 E. 4. 6.

41 E. 3. 8. b. 2 H. 4. 2. 21 H. 6. 56. 44 E. 3. 42. Br. tit. Quod ei defor. 4. Pasch. 33 El. Ro. 1125. inter Ed. Elmer. & El. sa. feme ten. en Dower demandants & Wil. Thacker ten. in Quod ei deforceat.

As to the second objection, That the Defendant may have an attaint, first, it was utterly denyed of the other part, (f) that an attaint did lie in this case; for though it be taken by the Oath of twelve men, yet it is but an enquest of office, whereupon no attaint did lie on either party, as upon an enquire of collusion, although it be by one Jury; nor upon a verdict in a quare jus. Secondly, Admitting that an attaint did lie in that case, yet it followeth not ex Consequenti, that a quod ei deforceat did not lie; (g) for if an assise be taken by default, a quod ei deforceat doth lie, and yet the party may have an attaint, for this is no Enquest of Office, but a recognition by the Recognitors of an assise, who were returned the first day, and not returned upon the awarding of the assise by default. And as to the second objection, of this opinion was the whole Court in Edward Elmers case above mentioned. As to the third objection, That the damages should be the principal, because they were at the Common Law, that is an argument (say the other side) that they are more ancient, but not that they are more principal, and treble damages were not at the Common Law (for the Common Law never giveth more damage than the loss amounteth unto) but are given by the Statute of Glocester; but the place wasted is worthier being in the realty, than damages that be in the personalty; Et omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius, & à digniori debet fieri denominatio. And it is confessed, that in an Action of Waste against Tenant for life, or for years, the place wasted is the principal, because the Statute of Glocester doth give the place wasted, and treble damages at one time: for no prohibition or Action of Waste lay against them at the Common Law; and in an Action of Waste, if the Defendant confess the Action, the Plaintiff may have judgement for the place wasted, and release the damages, which proveth (and so Fitzherbert collecteth) that the damages are not the principal, for a man shall never release the principal, and have judgement of the accessory: and an Action of Waste against Tenant for life is as real as an Action against Tenant in Dower. And as to the case of 9 H. 5. cited on the other side, it was answered, that it was an Action in the Tenuit, which is only in the personalty, and then the release of the one doth bar both; neither could summons and severance lie in that case (h) but in Action of an Waste (in the Tenet) either against Tenant for life, or for years, the release of the one doth not bar the other, and in both those cases summons and severance doth lie; and this point was also resolved accordingly in Edward Elmers case. But when these three points were resolved by the Court for the Demandant, then the Council of the Tenant moved in arrest of Judgement another point, viz.

(f) 33 E. 3. quod ei defer. Pl. ult. F.N.B. 156. V. Flet. l. 5. c. 21 48 E. 3. 19. 40 Ass. 23. 33 H. 6. 25. 39 H. 6. 1. F.N.B. 107.

(g) 17 E. 2. Attaint. 69. 21 H. 6. 56. 34 H. 6. 12.

34 H. 6. 7. Wast. 50.

(h) 6 E. 3. 47. 48 E. 3. 19.

viz. that the judgment was given upon a Nihil dicit, which is always after appearance, and not per defaltam, and thereupon judgment was stayed.

But to return to Littleton. Here he openeth a secret of Law, for the cause of this Remitter is for that the Tenant for life in this case might have Quod ei deforceat, for so Littleton saith: Issins que il poit aver, Quod ei deforceat: Now it appeareth by our Books, that the Tenant for life at the Common Law was remediless, because he could not have (as hath been said) a writ of Right, and consequently the Feme covert in this case could not be remitted by the taking of an Estate to her husband and her, because her right was remediless, and could have no action. But when an act of Parliament or a Custome doth alter the reason and cause thereof, thereby the Common Law it self is altered. If the act of Parliament and Custome be pursued, for Alterata causa & ratione Legis, alterarur & Lex; & cessante causa seu ratione Legis cessat & Lex: as in this case the Statute of W. 2. giving remedy to the Feme tenant for life, in this it giveth her ability to be remitted, because her right is now remediless, but she hath an action to recover it.

Vide for the cases upon this ground 14 H.7.11. per tuteux. 27 H.8.4. b. Aid, 35 H.6. Gard. 72. 29 E.3.5. per Willbie Custome Lib.2 fo 86. Justice Wingham's cases a. & b.

And Littleton warily putteth his case, that the recovery was had against the Feme while she was sole, for there was a time when it was a question, Whether a recovery being had by default against the husband and wife (the wife being Tenant for life) the said Statute gave a Quod ei deforceat to the husband and wife, for that the Statute gave it against Tenant in Dower and Tenant for life, &c. and here the husband is not Tenant for life, but seised in the right of his wife, and therefore out of the Statute: and of this opinion is one (g) Book, but (Apices juris non sunt jura, & parum differunt quæ re concordant) the contrary hath been adjudged, and so that point is now in peace: and the like in case of recoit for him in reversion. But if the husband and wife lose by default, and the husband die, the wife shall not have a Quod ei deforceat, or a Cui in vita is given to her in that case by a former Statute, viz. W. 2. cap. 3. These things are worthy of due observation, and points of excellent learning, and Littleton in our books speaks of another kind of a quod ei deforceat at the Common Law, upon a disseisin, which you may read. But now let us hear him in his Book.

(g) 4 E.3.83. 33 E.3. Avowry 255. 5 E.3.4. 33 E.3. Avowry 255. F.N.B. 156.2. 5 E.2.5. 2 E.4.13. F.N.B.156. G. 32 H.6.46. 2 E.4.81. 19 E. 4. 2.

¶ *Le reversion est discontinue, issint que il ne poit aver Action de Waste.* 45 E.3.21. 44 E.3.34. 35 F.N.B.60. 23 H.8. tit. Wast. Br. 138.

Here it appeareth, That when the reversion is devested, the Lessor cannot have an action of waste, because the writ is, that the Lessor did waste ad exhæredationem of the Lessor, and that Inheritance must continue at the time of the action brought: and it is to be observed, That in an action of waste brought by the Lessor against the Lessee, the Lessee in respect of privity cannot plead generally, Riens en le Reversion, viz. (h) That the Lessor hath nothing in the reversion, but he must shew how and by what means the reversion is devested out of him: and this holdeth (as hath been said) between the Lessor and the Lessee: but if the Grantee of a reversion bringeth an action of waste, the Lessee may plead generally, that he hath nothing in the reversion. And yet in some special cases an action of waste shall lie, albeit the Lessor had nothing in the reversion at the time of the waste done. As if Tenant for life make a feoffment in fee upon condition, and waste is done, and after the Lessee re-enter for the condition broken, in this case the Lessor shall have an action of waste. And so if a Bishop make a lease for life or years, and the Bishop die, the Lessee, the See being void, doth waste, the Successor shall have an action of waste. So if Lessee for life be disseised, and waste is done, the Lessee re-enter, an action of waste shall be maintained against the Lessee, and so in like cases: and yet in none of these cases the Plaintiff in the action of waste had any thing in the reversion at the time of the waste made, but these special cases have their several and especial reasons, as the learned Reader will easily find out.

(h) 4[e] E.3.20. 8 H.6. 23 H. 6. 7.

Here note, That albeit the action be false and feigned, yet is the recovery so much respected in Law, as it worketh a Discontinuance. (i) But if Tenant for life suffer a common Recovery, or any other recovery, by covine and consent between the Tenant for life and the Recoveror, this is a forfeiture of his Estate, and he in the Reversion may presently enter for the forfeiture. Since our Author wrote the Statute of 14 El. cap. 8. hath been made concerning this matter, which is to be considered, (k) and hath well construed and expounded, and needs not here to be repeated.

(i) 5 Ass. Pl. 3. 5 E.3. Ent. Cong. 42. 14 E.3. Age 95. 41 E.3.18 per Finchden 22 E.3. 2. b. Lib. 1. fol. 15. Sir Will. Pelhams case 14 El. ca. 8.
(k) Lib.3. fo.60. li.1.fo.15.

And it is to be observed, that although the discontinuance groweth by matter of Record, yet the Remitter may be wrought by matter in Pais: and of the reason of these two Sections sufficient hath been said before.

Sect. 676.

¶ Item, ſi le baron diſcontinua le terre de ſa feme, & puis reprist eſtate a luy & a ſa feme, & al tierce perſon, pur terme de lour vies, ou en fee, ceo neſt un remitter a la feme, forſque quant a la moiety. & pur lauter moiety el covient aprés la mort ſon baron de ſuer un briefe de Cui in vita.

ALſo, if the husband diſcontinue the land of his wife, and after taketh back an Eſtate to him and to his wife, and to a third perſon, for term of their lives, or in fee, this is no Remitter to the wife; but as to the moiety, and for the other moiety ſhe muſt after the death of her husband ſue the writ of *Cui in vita*.

44 E. 3. 17. 44 Aſſ. 2. 43 Aſſ. Vid. Sect. 666.

¶ *Car neſt remitter forſque quant al moietie, &c.* Albeit there is Authority in our Books to the contrary, yet the Law is taken, as Littleton here holdeth it: and as before it appeareth in the like caſe in this Chapter, and for the reaſon therein expreſſed.

Sect. 677.

35 E. 4. 1. b. 7 H. 4. 17. 1 H. 7. 16. b. 39 E. 3. 30. & H. 8. 24.

¶ *Et puis le baron revient & agrea, &c.* In this caſe the Eſtate is in the Feme Covert preſently by the livery before any agreement by the husband; and of this opinion is Littleton in our Books.

¶ *A la ouſter le mere.* If he had been within the Realm, it doth not alter the caſe.

¶ *Quære en ceſt caſe, ſi le baron, &c.* Here is a queſtion moved by Littleton, whether the diſagreement of the Husband ſhall ouſte the eſtate of her Remitter. And it ſeemeth that the diſagreement ſhall not devest the Remitter: Firſt, becauſe the ſtate made to the wife which wrought the Remitter is vaniſhed and wholly defeated, and therefore no diſagreement of the husband can devest the ſtate gained by the leaſe, which by the remitter was devested before.

Secondly, for that the Law having one reſtored her ancient and better right will not ſuffer the diſagreement of the husband to devest it out of her, and to revive the Diſe-

¶ Item, ſi le baron diſcontinue la terr ſa feme, & a la ouſter le mere, & le diſcontinuee leſſa meſme la terre al feme pur term de ſa vie, & liver a luy ſeiſin, & puis le baron revient, & agrea a cel liverie de ſeiſin, ceo eſt un Remitter a la Feme, & untore ſi la Feme fuiſſoit ſole al temps de le leas fait a luy, ceo ne ſerroit a luy un Remitter. Mes entant que el fuit covert de baron al temps de la leas, & de le liverie de ſeiſin fait a luy, coment que el prift ſolement le liverie de ſeiſin, ceo fuit un Remitter a luy pur ceo que feme covert ſerra adjudge

ALſo, if the husband diſcontinue the land of the wife, and goeth beyond ſea, and the Diſcontinuee let the ſame land to the wife for term of her life, and deliver to her ſeiſin, and after the husband cometh back, and agreeth to this livery of ſeiſin, this is a Remitter to the Wife; and yet, if the Wife had been ſole at the time of the leaſe made to her, this ſhould not be to her a Remitter; but inaſmuch as ſhe was covert baron at the time of the leaſe, and livery of ſeiſin made unto her, albeit ſhe taketh only the livery of ſeiſin, this was a Remitter

ſicome

ſicome enfant deins age en tiel cas, &c. Quære en teſt cas, ſi le baron quand il revient voil diſagrée a le leas & livery de ſeiſin fait a ſon feme en ſon abſence, ſi ceo oustera ſon feme de ſon Remitter, ou nemy, &c.

to her becauſe a Feme covert ſhall be adjudged as an infant within age in ſuch a caſe, &c. *Quære*, in this caſe, if the husband when he comes back wil diſagree to the leaſe and livery of ſeiſin made to his wife in his abſence, if this ſhall ouſt his wife of her remitter, or not, &c.

of the eſtates ſhe will. As if Lands be given to the husband and wife, and their heirs, the husband make a feoffment in fee, the feoffee giveth the Land to the husband and wife, the heirs of their two bodies, the husband dieth. In this caſe the wife may elect which of the eſtates ſhe will, for both eſtates are wavable, and her time of election and power of waver accrewed to her firſt after the decreaſe of her husband. If lands be given to a man and the heirs females of his body, and he maketh a feoffment in fee, and take back an eſtate to him and his heirs, and dieth having iſſue a daughter, leaving his wife groſſement enſeint with a ſon and dieth, the daughter is remitted; and albeit the Son be afterward born, he ſhall not devest the Remitter. 18 Eliz. Dier 351.

Sect. 678.

¶ Item, ſi le baron diſcontinua les tenements ſon feme & le diſcontinuée eſt diſſeiſie, & puis le diſſeiſor leſſa meſmes les tenements a le baron & a ſon feme pur term de vie, ceo eſt un remittera la feme. Mes ſi le Baron & ſon feme fueront de covin & conſent que le diſſeiſin doit eſte fait, donques il neſt Remitter a ſon feme pur ceo que il eſt diſſeiſe reſſe: Mes ſi le baron ſuit de covin & conſent a le diſſeiſin, & nemy la feme, donque

Alſo, if the huſband diſcontinue the Lands of his wife, and the diſcontinuee is diſſeiſed, and after the Diſſeiſor letteth the ſame lands to the huſband and Wife for term of life, this is a Remitter to the Wife. But if the husband and his Wife were of covine and conſent that the diſſeiſin ſhould be made, then it is no remitter to his Wife, becauſe ſhe is a diſſeiſoreſſe: But if the huſband were of covine and conſent to the Diſſeiſin, and not the Wife

¶ *Et puis le diſſeiſor liſſa meſme les tenements, &c.* Note, ſo much are remitters favoured in Law that the ſtate made by the diſſeiſor (which cometh to the land by wrong, and upon whom the entry of the diſcontinuee is lawfull) doth remit the wife, and deſeateth all out of the diſcontinuee, albeit he hath a warranty of the land. 18 E. 4. 2. b.

¶ *Mes ſi le Baron & feme fuer' de covin & conſent, &c.* Here it appeareth that covin and conſent of the husband and wife doth hinder the remitter of the wife; for covine and conſent in many caſes to do wrong, doth choak a meer right; and the ill manner doth make a good matter unlawful. 18 E. 4. ubi ſupra.

¶ *Covin.* Covina cometh of the French word Comine, and is a ſecret aſſent de- (c) Pl. Com. 346. in Wimbliſhes caſe.

continuance and revest the wrongful eſtate in the Diſcontinuee.

Thirdly, for that remitters tending to the advancement of ancient rights are favoured in Law.

And ſo it is for the ſame cauſes, if the wife ſurvive her husband, ſhe cannot claim in by the purchaſe made during the coverture, but the Law adjudgeth her in her better right. But if both eſtates be wavable, there albeit the wife prima facie is remitted, yet after the decreaſe of her husband, ſhe may elect which 41 E. 3. 18.

determined in the hearts of two or more to the defrauding and prejudice of another.

44 E.3.46. 11 H.4. 60. 44 Aſſ.29. 19 H.8.12. 18 H.8.5. 11 E.4.2. 7 H.7.11.

A woman is lawfully intitled to have dower, and ſhe is of Covine and conſent.

tiel leas fait al feme eſt un remitter, pur ceo que nul default fuit en la feme.

then ſuch leaſe made to the wife is a remitter, for that no default was in the wife.

that one ſhall diſſeiſe the Tenant of the Land, againſt whom ſhe may recover her lawful Dower, all which is done accordingly, the Tenant may lawfully enter upon her, and avoid the recovery in reſpect of the Covine. But if a Diſſeiſor, Intruder, or abator, do endow a woman that hath lawful title of Dower, that is good, and ſhall bind him that right hath, if there were no ſuch Covine or conſent before the Diſſeiſin, Abatement or Intruſion.

41 Aſſ. p.28. 25 Aſſ.p.1. 27 Aſſ. 74. 15 E.4.4.2. 12 Aſſ. p.10.

And ſo it is in all caſes where a man hath a rightful and juſt cauſe of Action, yet if he of Covine and conſent do raiſe up a Tenant by wrong againſt whom he may recover, the Covine doth ſuffocate the right, ſo as the recovery, though it be upon a good title, ſhall not bind, or reſtore the demandant to his right.

11 E.4.2. 5 E.4.23. 14 H.8.12. 33 H.6.5. 12 E.4.21. b.

If Tenant in tail and his iſſue diſſeiſe the diſcontinuee to the uſe of the Father, and the Father dieth, and the Land deſcendeth to the Iſſue, he is not remitted againſt the Diſcontinuee in reſpect he was privy and party to the wrong; but in reſpect of all others he is remitted, and ſhall veraigne the firſt warranty. And ſo note, a man may be remitted againſt one, and not againſt another.

F.N.B. 179. g. 12 E. 4. 9. 35 Aſſ.5. 44 E.3.9.23. 13 Aſſ.1. Temps E.1. Waſte 128. 16 Aſſ. p.7. 21 E.4.33. 21 H.7.35. 3 H.4.17.

A. and B. Joyntenants be intitled to a real action againſt the heir of the diſſeiſor, A. cauſe the heir to be diſſeiſed, againſt whom A. and B. recover and ſue execution, B. is remitted for that he was not party to the Covine, and ſhall hold in the common with A. but A. is not remitted, for the reaſon that Littleton here ſheweth.

¶ *Pur ceo que el eſt diſſeiſoreſſe.* Nota. It is regularly true that a feme Covert cannot be a diſſeiſoreſſe by her commandement or procurement precedent, nor by her aſſent or agreement ſubſequent, but by her actual entry or proper act, ſhe may be a Diſſeiſoreſſe. And therefore ſome do hold that Littleton muſt be intended, that the husband and wife were preſent when the diſſeiſin was done; and others do hold that Littleton is good law, albeit ſhe were abſent, for that if her procurement or agreement be to do a wrong, to cauſe a remitter unto her, in this ſpecial caſe ſhe ſhall faile of her end, and remitted ſhe ſhall not be, but in this ſpecial caſe ſhe ſhall be holden as a Diſſeiſoreſſe by her Covine and conſent quatenus to hinder the Remitter. And here it appeareth, that albeit the husband be of Covine and conſent, &c. yet if the wife were not of Covine and conſent alſo, ſhe ſhall be remitted, becauſe as Littleton ſaith, there was no default in the wife.

Sect. 679.

¶ ITem, ſi tiel diſcontinuée ſeiſoit eſtate de franktenement al baron & a ſon feme per fait endent, ſur condition, &c. reſervant al diſcontinuée un certaine rent, & pur default de payment un reentry, & pur ceo que le rent eſt arere, le diſcontinuée enter, donques de cel entrie le feme aberra un Aſſiſe de Novel diſſeiſin, apres la mort ſon baron envers le diſcontinuee, pur ceo que le condition fuit tout ouſterment aniente, entant que la feme fuit en ſa remitter, uncore le baron obeſque ſa feme

ALſo, if ſuch diſcontinuee make an eſtate of Freehold to the husband and wife by deed indented upon condition, &c. reſerving to the diſcontinuee a certain rent, and for default of payment a re-entry, and for that the rent is behind the diſcontinuee enter, then for this entry the wife ſhall have an Aſſiſe of *Novel diſſeiſin*, after the death of her Husband, againſt the Diſcontinuee, becauſe the condition was altogether taken away, inaſmuch as the wife was in her remitter, yet the Husband with his wife can-

feme

feme ne poient aver Aſſiſe, pur ceo que le baron eſt eſtoppe, &c.

not have an aſſiſe becauſe the huſband is eſtopped, &c.

IT is hereby to be obſerved, that the wife is preſently remitted, and that the conditions, and Rents, and all other things annexed to, or reſerved upon the ſtate (that is vaniſhed and defeated by the remitter) are defeated alſo.

Pl. Com. in Amy Townſhends caſe. 12 R. 2. tit. Remitter. 12.

Sect. 680, 681.

¶ ITem, ſi le baron diſcontinua les tenements ſa feme, & reprift eſtate a luy pur terme de ſa vie, le remainder apres ſon deceaſe a ſa feme put terme de ſa vie, en teſt cas ceo neſt un remitter a la feme durant la vie le baron, put ceo que durant la vie le baron, la feme nad riens en le franktenement. Mes ſi en ceo cas la feme ſurveſquiſt le baron, ceo eſt un remitter a la feme, pur ceo que un franktenement en ley eſt jet ſur luy maugre le ſoen. Et entant que el ne poit aver action envers nul auter perſon, & envers luy meſme el ne poit aver action, pur ceo el eſt en Poſſeſſion. Remitter. Car en teſt cas coment que la feme ne entra pas en les tenements, uncore un eſtrange q; ad cauſe de aver action, poit ſuer ſon action envers la feme de meſmes les tenements, pur ceo que el eſt tenant en ley coment que el ne ſoit tenant en fait.

ALſo if the husband diſcontinue the tenements of his wife, and take back an eſtate to him for life, the remainder after his deceaſe to his wife for term of her life, in this caſe this is no remitter to the wife during the life of the husband, for that during the life of the husband the wife hath nothing in the Freehold. But if in this caſe the wife ſurviveth the husband, this is a remitter to the Wife, becauſe a Freehold in Law is caſt upon her againſt her will. And inaſmuch as ſhe cannot have an action againſt any other perſon, and againſt her ſelf ſhe cannot have an action therefore ſhe is in her remitter. For in this caſe, although the wife doth not enter into the tenements, yet a ſtranger which hath cauſe to have an action, may ſue his action againſt the wife for the ſame tenements, becauſe ſhe is Tenant in Law, albeit that ſhe be not Tenant in deed.

Sect. 681.

¶ CAr le franktenement en fait eſt celuy, que ſil ſoit diſſeiſe de franktenement, il poit aver aſſiſe. Mes tenant de franktenement en ley devant ſon entre en fait, navera my aſſiſe. Et ſi home ſoit ſeiſie de certeine terre, & ad iſſue fits quel prent

FOr Tenant of Freehold in deed is he, who, if he be diſſeiſed of the Freehold, may have an Aſſiſe, but Tenant of Freehold in law before his entry in deed, ſhall not have an Aſſiſe. And if a man be ſeiſed of certain Land, and hath iſſue a ſon who taketh wife, and

feme

feme, & le pier devie seisie, & puis le fits devie devant alcun entrie fait pur luy en la terre, la feme fits serra endowe en le tre, & uncore il navoit nul franktenement en fait, mes il avoit un fee & franktenement en ley. Et istint nota, que Præcipe quod reddat poit auxibien estre maintenus envers celuy que ad franktenement en ley, sicome envers celuy q ad le franktenement en fait.

the Father dieth seised, and after the son dies before any entry made by him into the Land, the wife of the son shall be endowed in the land, and yet he had no Freehold in Deed, but he had a Fee and Freehold in Law. And so note, that a *Præcipe quod reddat* may as well be maintained against him that hath the Freehold in Law, as against him that hath the Freehold in Deed.

18 H.8.3.

Vide Sect. 447. Bracton lib. 4. fol. 206. 237. Britton 83. b. Fleta, Lib. 3. cap. 15.

¶ Here five things are to be observed; First, that a remainder expectant upon an estate for life worketh no remitter, but when it fall in possession: for before his time he can have no action, and no Freehold is in him. Secondly, though the woman might have the remainder, yet because she is presently by the death of the husband Tenant to the Præcipe, it is within the rule of Remitter, and her power of waver, is not material. Thirdly, that a Freehold in law being cast upon the woman by act of law, without any thing done or assented to by her, doth remit her, albeit she be then sole, and of full age. Fourthly, that a Præcipe lieth against one that hath but a Freehold in law. Fifthly, that a woman shall be endowed where the husband hath the inheritance, and but a Freehold in law, as hath been said in the Chapter of Dower.

Sect. 682.

¶ Item, si tenant en taile ad issue deux fits de pleine age, & il lessa la terre taile al eigne fits pur terme de sa vie, le remainder al fits puisne pur terme de sa vie, & puis le tenant en taile mourust, en cest cas leigne fits nest pas en son remitter, pur ceo que il prent estate de son pier. Mes si leigne fits mourust sauns issue de son corps, donque ceo est un remitter al puisne frere, pur ceo que il est heire en le taile, & un franktenement en le ley est escheat, & feate sur luy per force de le remainder, & il y ad nul envers que il poit sue son action.

Also, if Tenant in tail hath issue two sons of full age, and he letteth the land tailed to the eldest son for term of his life, the remainder to the younger son for terme of his life, and after the Tenant in tail dieth, in this case the eldest son is not in his remitter, because he took an estate of his Father. But if the eldest die without issue of his body, then this is a remitter to the younger brother, because he is heir in tail, and a Freehold in Law is escheated and cast upon him by force of the remainder, and there is none against whom he may sue his action.

(a) 22 E.4.20.
(b) Sect. 684, 685.

¶ Of this opinion is (a) Littleton in our Books; and of this sufficient hath been said in the next Section before. We hereafter (b) some explanation hereof.

Sect.

Sect. 683.

¶ EN meſme le manner eſt, lou home ſoit diſſeiſie, & le diſſeiſor morust ſeiſie, & les tenits diſcendont a ſon heire, & l' heire le Diſſeiſor fait un leas a un home de meſmes les tenements pur terme de vie, le remainder a le Diſſeiſee pur term de vie, ou en taile, ou en fee, le tenant a terme de vie morust, ore ceo eſt un Remitter al Diſſeiſee, &c. Cauſa qua ſupra, &c.

IN the ſame manner it is, where a man is diſſeiſed, and the Diſſeiſor dieth ſeiſed, and the tenements diſcend to his heir, and the heir of the Diſſeiſor make a leaſe to a man of the ſame tenements for term of life, the remainder to the Diſſeiſee for term of life, or in tail, or in fee, the tenant for life dieth, now this is a Remitter to the Diſſeiſee, &c. *Cauſa qua ſupra, &c.*

¶ AND this ſtandeth upon the ſame reaſon that the caſes in the two Sections precedent do. See the next Section following.

Sect. 684.

¶ NOta, ſi tenit en taile enfeoffa ſon fits & un autre per ſon fait de la terre taile en fee, et livery de ſeiſin eſt fait a lauter accordant al fait, & le fits rien conuſant de ceo agrea a le feoffment, & puis celuy que prist le livery de ſeiſin devy, & le fits ne occupia la terre, ne prent aſcun profit del terre durant la vie le pier, & puis le pier morust, ore ceo eſt un Remitter al fits, pur ceo le franktenement eſt ſeet ſur luy per le ſurvivor: Et nul default fuit en luy, pur ceo que il ne unque a-

NOte, if Tenant in tail infeoffee his ſon & another by his deed of the land intailed in fee, and Livery of ſeiſin is made to the other according to the deed, and the ſon not knowing of this agreeth to the feoffment, and after he which took the Livery of ſeiſin dieth, and the ſon doth not occupy the land, nor taketh any profit of the land during the life of the Father, and after the Father dieth, now this is a Remitter to the ſon, becauſe the freehold is caſt upon him by the ſurvivor: And no default was in

¶ It ſhould ſeem by this mark that this was an addition to Littleton, but it is of Littletons own work, and agreeth with the original, ſaving the original begun this Section thus: Item, ſi tenant en taile, &c.

¶ *Per ſon fait, &c.* Here Littleton materially addeth by his Deed; for if a man intendeth to (b) make a feoffment by parol to A. and B. and he & B. come upon the land, A. being abſent, and make Livery to B. in the name both of B. and A. and to their heirs, this ſhall enure only to B. for neither can a man abſent take Livery, nor make Livery without deed.

(b) Temps H. 3. Feoffments Br. 72. 40 E. 3. 41. 10. 10 E. 4. 3. 13 E. 4. 18. 18 E. 4. 18 & 21 H. 6. 12.

¶ *Et liverie de ſeiſin eſt fait a lauter accordant al fait, &c.* Note, livery being made to one according to the Deed, enureth to both, becauſe the Deed whereunto the Livery referreth is made to both; for the rule is, That Verba relata hoc maxime operantur per referentiam, ut in eis ineſſe videntur.

¶ Et

¶ *Et le fits nient conusant de ceo, ne agree a le feoffment.* Here it appeareth, that if the son be Conusant, and agreeth to the feoffment, &c. this is no Remitter to him. And therefore if the

grœa, &c. en la vie son pier, & il ad nul envers q̃ il poit suer Briefe de Formedon, &c.

him, because he did never agree, &c. in the life of his Father, and he hath none against whom he may sue a Writ of *Formedon, &c.*

Feoffment were made by Deed indented, and the son with the other sealeth the counterpart, and then the Feoffor maketh livery to the other according to Deed, and the other dieth, the son is not remitted, because he was conusant of the Feoffment, and agreed to the same; and Littleton saith in the case that he putteth, That there was no default in the son, because he agreed not to the Feoffment in the life of the Father: And so it seemeth, that if A. be disseised in tail, and have Issue two sons, and by deed indented between him of the one part, and the sons of the other part, maketh a lease to the eldest for life, the remainder to the second in Fee, and dieth, and the eldest son dieth without issue, the second son is not remitted, because he agreed to the remainder in the life of the Father, or if the like Estate had been made of Mayol, if in the life of the Father the Tenant for life had been impleaded, and made default, and he in the remainder had been received, and thereby agreed to the remainder, after the death of the Father and the eldest son without issue, the second son should not be remitted, because he agreed to the remainder in the life of the Father: All which is well warranted by the reason yielded by our Author in this Section.

vide Sect. 682.

Sect. 685.

¶ CAR si home soit disseisie de certeine terre, & le Disseisor fait un fait de Feoffement, per que il infeoffa B. C. & D. & le liverie de seisin est fait a B. & C. Mes D. de suit al Liverie de seisin: ne unqs agrœa a le feoffement, ne unque voile prender les profits, &c. & puis B. & C. devieront, & D. eux survesquist, & le Disseisee port son Briefe sur disseisin en le Per, envers E. il monstra tout le matter, coment il ne unques agrœa a le feoffement, & isslint il dischargera luy le damages, isslint que le demandant ne recovera aicuns damages envers luy, coment que il soit Tenant del franktenement del terre. Et uncore le Statute de Glouceſter cap. 1. voit, que le Disseisee recovera damages en Briefe de Entre foundue sur Disseisin vers celuy que est trove Tenant. En ceo est un prove en lauter case, que entant

FOR if a man be disseised of certain land, and the Disseisor make a deed of Feoffment, whereby he infeoffeth B. C. and D. and livery of seisin is made to B. and C. but D. was not at the Livery of Seisin, nor ever agreed to the feoffment, nor ever could take the profits, &c. and after B. and C. die, and D. survive them, and the Disseisee bringeth his Writ upon Disseisin in the *Per* against D. he shall shew all the matter, how he never agreed to the feoffment, and he shall discharge himself of damages, so as the Demandant shall recover no damages against him, although he be Tenant of the freehold of the Land. And yet the Statute of *Glouceſter, cap.* 1. will, That the Disseisee shall recover damages in a Writ of Entry founded upon a Disseisin against him which is found Tenant. And this is a proof in the other Case,

que

que Liſſue en le taile avient a le Franktenement, & nemy per ſon fait, ne per ſon agreément mes apres la mort ſon pier, ceo eſt un Remitter a luy, entant que il ne poit ſuer Action de Formedon envers nul auter perſon, &c.

that foraſmuch as the Iſſue in tail came to the freehold, and not by his act, nor by his agreement, but after the death of his Father, therefore this is a Remitter to him, inaſmuch as he cannot ſue an Action of *Formedon* againſt any other perſon, *&c.*

¶ This caſe ſtandeth upon the ſame reaſon that the next precedent caſe doth.

¶ *Mes celuy que eſt trove Tenant*, &c. Here it appeareth, that Acts of Parliament are to be ſo conſtrued, as that no man that is innocent or free from injury or wrong, be by a natural conſtruction puniſhed or endamaged: and therefore in this caſe, albeit the letter of the Statute is generally to give damages againſt him that is found Tenant, and the caſe that Littleton here putteth, D. being ſurvivor, is conſequently found Tenant of the land, yet becauſe he waved the Eſtate, and never agreed to the Feoffment, nor took any profits, he ſhall not be charged with the damages.

Sect. 686, 687.

¶ ITem, ſi un Abbe aliena la tre de ſon meaſon a un auter en fee, & Alienée per ſon fait charge la terre ove un rent charge en fee, & puis Alienée infeoffa Labbe ove licence, a aver & tenir al Abbe & a ſes Succeſſors a touts jours, & puis Labbe morust, et un auter eſt eſlieu, et fait Abbe: en ceſt caſe Labbe que eſt le Succeſſor, et ſon Covent, ſont en lour Remitter, et tien dyont la terre diſcharge, p ceo que meſme Labbe ne poit aver aſcun action, ne briefe Dentre ſine aſſenſu Capituli, de meſme la terre envers nul auter perſon.

ALſo, if an Abbot alien the land of his houſe to another in fee, and the Alienee by his deed charge the land with a rent charge in fee, and after the Alienee infeoffe the Abbot with licence, to have and to hold to the Abbot and to his Succeſſors for ever, and after the Abbot die, and another is choſen, and made Abbot; in this caſe the Abbot that is the Succeſſor, and his Covent, are in their Remitter, and ſhall hold the land diſcharged, becauſe the ſame Abbot cannot have an Action, nor a writ of *Entre ſine aſſenſu Capituli*, of the ſame land againſt any other perſon.

Sect. 687.

¶ EN meſme le manner eſt, lou un Evelque, ou un Deane ou auters tiels Perſons aliena, &c. ſans aſſent, &c. et Alienée charge la terre, &c. et puis Levelque repriſt eſtate de meſme la terre per licence, a luy & a ſes

IN the ſame manner it is, where a Biſhop or a Dean, or other ſuch perſons alien, *&c.* without aſſent, *&c.* and the Alienee charge the land, *&c.* and after the Biſhop takes back an eſtate of the ſame land by Licence, to him and his Succeſ-

Suc-

Successors, & puis levesque devie, son Successor est en son Remitter, come en droit de son Eglise, & defeatera le charge, &c. Causa qua supra, &c.

sours, and after the Bishop dieth; his Successor is in his Remitter as in right of his Church, and shall defeat the charge, &c. *Causa qua supra.*

¶ Our Author having spoken of Remitters to singular or natural persons, as Issues in tail, and to feme Coverts, and to their heirs, and to them in reversion or Remainder, and their Heirs; now he speaketh of Remitters to bodies politick and incorporate, as to Abbots, Bishops, Deans, &c. And as discents do remit the heir which comes in the Per, so succession doth remit the Successor, albeit he cometh in the Post. And so in other cases where the Issue in tail of full age shall be remitted, there in the like case shall the Successor be remitted also, and defeat all main charges and incumbrances.

¶ *Ove Licence*, &c. That is, of the King and the Lords immediate and mediate to dispense with the Statutes of Mortmain, whereof see more before, Sect. 140.

Sect. 688.

¶ Item, si home suist faux action envers le Tenant en taile, si come home poile suer envers luy un briefe Dentre en le post, supposant per B. briefe que le Tenant en taile nad pas entre, sinon per A. de B. que disseisist layel le Demandant, & ceo est faux, & il recover envers le Tenant en le taile per default, & suist execution, & puis le Tenant entaile mourust, son Issue poit aver Briefe de Formedon envers luy que recovera, & sil voile pleader le recoverie envers le Tenant en taile, lissue poit dire, que le dit A. de B. ne disseisist poynt layel celuy que recoverast, en le maner come son briefe suppose, & issint il saurera le recoverie. Aury Posito, que ceo fuit voyer, que le dit A. de B. disseisist layel le demandant que recoverast, & que apres le disseisin, le demandant, ou son Pier, ou son ayel per un fait avoyent relesse al Tenant en taile, tout le droit que il avoit en la Terre, &c. & ceo nient contriste-

Also, if a man sue a false Action against Tenant in tail, as if one will sue against him a Writ of Entrie in *Post*, supposing by this Writ, that the Tenant in tail had not his Entry, but by A. of B. who disseised the Grandfather of the Demandant, and this is false, and he recovereth against the Tenant in tail by default, and sueth Execution, and after the Tenant in tail dieth; his Issue may have a Writ of *Formedon* against him which recovereth; and if he will plead the Recovery against the Tenant in tail, the Issue may say, That the said A. of B. did not disseise the Grandfather of him which recovered in manner as his Writ supposeth, and so he shall falsifie his recovery. And admit this were true, That the said A. of B. did disseise the Grandfather of the Demandant, which recovered, and that after the disseisin, the Demandant, or his Father, or his Grandfather by a Deed had released to the Tenant in tail all the right which he had in the

ant

ant il ſuiſt un Briefe Dentre en le Poſt envers le Tenant in Taile, en le manner come eſt avauntdit, et le Tenant en Taile pleda a celuy, Que le dit A. de B. ne diſſeiſiſt pas ſon ayel, en le manner come ſon Brieſe ſuppoſa, et ſur ceo ſont a Iſſue, & iſſue eſt trove pur le demandant, pur que il ad judgement de recover, et ſuiſt execution, et puis le Tenant en le Taile mozuſt, ſon iſſue poit aũ Brieſe de Formedon envers celuy que recovera, & ſil voile plead le recoverie per l'action trie envers ſon pier, que ſuit Tenant en Taile, donque il poit monſtrer & pleader le Releaſe fait al ſon pier, et iſſint laction que ſuit ſue, feint en Ley.

ſand, &c, and notwithſtanding this he ſueth a Writ of Entry in the *Poſt*, againſt the Tenant in Tail, in manner as is aforeſaid, and the Tenant in Tail plead to him, that the ſaid *A.* of *B.* did not diſſeiſe his Grandfather in ſuch manner as his Writ ſuppoſed, and upon this they are at iſſue, and the iſſue is found for the demandant, whereby he hath judgment to recover, and ſueth execution, and after the Tenant in tail dieth, his iſſue may have a Writ of *Formedon* againſt him that recovered, and if he will plead the recovery by the action tried againſt his father who was Tenant in tail, then he may ſhew and plead the releaſe made to his father, and ſo the action which was ſued, faint in Law.

¶ *IL recovera envers le Tenant en taile per default.* Littleton addeth (by default) becauſe if the (c) recovery paſſeth upon an iſſue tried by verdict, he ſhall never falſifie in the point tried, becauſe an attaint might have bẽn had againſt the Jurors, and albeit all the Jurors be dead, ſo as the attaint do fail, yet the iſſue in tail ſhall not falſifie in the point tried, which until it be lawfully avoided, pro veritate accipitur. As if the Tenant in tail be impleaded in a Formedon, and he traverſeth the gift, and it is tried againſt him, and thereupon the demandant recover. In this caſe the iſſue in tail ſhall not falſifie in the point tried, but he may falſifie the recovery by any other matter: as that the Tenant in Tail might have pleaded a collateral warranty or a releaſe, as Littleton here putteth the caſe, or to confeſs and avoid the point tried. And Littletons caſe holdeth not only a recovery by default, whereof herein he ſpeaketh, but alſo upon a nihil dicit, or confeſſion, or Demurrer.

(c) 12 E.4. 19. 3 E.4.3. 11 H.4.89.7 H.4.17. 14 H.7.10. 11.28. Aſſ. 32 32. 34. Aſſ. 7. 10 H.6.5, 19 H.6.39. 22 H.6.28.36 H.6. 31.36 H.6. Fauxifier de Recoverie 67.

Sect. 689.

¶ ET il ſemble que feint action eſt autant adire en Engliſh, A fained action, ceſt aſcavoir, tiel action, que coment que les paroix de le briefe ſont veyers, uncore pur certain cauſes il nad cauſe ne title pur la ley de recover pur meſme l'action. Et faux action eſt, lou les paroix de briefe ſont faux. Et en les deux caſes avantdits, ſi le cas ſuit tiel, que apres tiel recovery & execution

AND it ſeemeth that a faint action is as much to ſay, in Engliſh *A fained action*, that is to ſay, ſuch an action as albeit the words of the Writ be true, yet for certain cauſes he hath no cauſe nor title by the Law to recover by the ſame action. And a falſe action is, where the words of the Writ be falſe. And in theſe two Caſes aforeſaid, if the caſe were ſuch that after ſuch recovery, and execution

en fait, le tenant en taile uſt diſſeiſie celuy que recovera, et ent moruſt ſeiſie, per que la terre deſcendiſt a ſon iſſue, ceo eſt un remitter al iſſue, & l'iſſue eſt eins per force de le taile, et pur cel cauſe jeo aye mis les deux caſes precedents, pur enformer toy, mon fits, que l'iſſue en taile per force dun deſcent fait a luy apres un recovery et execution fait envers ſon auncеſtor poit eſtre auxy bien en ſon remitter ſicome il ſerroit per le deſcent fait a luy apres un diſcontinuance fait per ſon auncеſtor de les terres tailes, per feoffement en pais, ou autrement, &c.

thereupon done the tenant in tail had diſſeiſed him that recovered, and therefore died ſeiſed, whereby the land deſcended to his iſſue, this is a remitter to the iſſue, and the iſſue is in by force of the tail; and for this cauſe I have put theſe two caſes precedent, to inform thee (my Son) that the iſſue in tail by force of a deſcent made unto him after a recovery and execution made againſt his Anceſtor, may be as well in his remitter, as he ſhould be by the deſcent made to him after a Diſcontinuance made by his Anceſtor of the entailed lands by feoffment in the County or otherwiſe, &c.

HEre Littleton explaineth what a faint action is, and what a falſe action is, which is plain and perſpicuous. And here is to be obſerved, that a Remitter may be had after a recovery upon a faint action by a diſſeiſin and deſcent, as well by a deſcent after a diſcontinuance by a feoffment, &c.

Sect. 690.

28.Aſſ.31.34.Aſſ.Pl.7. 15 E.3. Age.95.11 H.4. 89.7 H.4.17.33 E.3. Entry cong.31.21 H. 6. 13.10 H.5.6.2 E.4.20. 14 H.7.11.24.El.Dier. 376.li.1.f.106. Shelleys caſe,Pl. Com.55.

HEre it appeareth that if a Judgment be given againſt a Tenant in tail upon a faint or falſe action, and Tenant in tail die before execution, no execution can be ſued againſt the iſſue in tail. But if in a common recovery judgment be had againſt Tenant in tail where he voucheth, and hath judgment to recover over in value, albeit the Tenant in tail dieth before execution; yet the recoveror ſhall execute the judgment againſt the iſſue in tail in reſpect of the intended recompence, and for that it is the common aſſurance of the Realm, and is well warranted (d) by our Books, and was not invented by Juſtice Cook, who was a grave and learned Judge in the time of E.4. (as ſome hold by tradition) but it may be

ITem, en les caſes avantdits, ſi le cas fuit tiel, que apres ceo que le demandant avoit judgement de recover envers l' tenant en tail, et meſme le tenant in taile moruſt devaunt aſcun execution ewe envers luy p que les tenements deſcendont a ſon iſſue, et celuy que recovera ſuiſt un ſcire facias, hors de le judgement daver execution de le judgement envers l'iſſue en taile, iſſue pledera le

ALſo, in the caſes aforeſaid, if the caſe were ſuch, that after that the Demandant have judgment to recover againſt the tenant in tail, & the ſame tenant in tail dieth before any execution had againſt him, whereby the tenements deſcend to his iſſue, and he who recovereth ſueth a *ſcire facias* out of the judgement to have execution of the judgment againſt the iſſue in Tail, the iſſue ſhall plead them after as aforeſaid, and ſo

matter

See hereafter Sect.709: 15 E.3.Briefe.324.42. E.3.53 44 E.3.21.48 E. 3.11.1 E.4.5.5 E.4.2.

(d)12 E.4.20.Dier. 21 El.376.lib.10 fol.37. 38. In Mary Portington caſe.

matter come avaunt eſt dit: Et iſſint prova que l'dit recovery fuit faux, ou feint en ley, & iſſint luy barrera daver execution de le judgement.

prove that the ſaid recovery was falſe, or faint in Law, and ſo ſhall bar him to have execution of the judgment.

that it was upon former authorities and opinions of Judges diſcovered by him, aſſented unto by the reſt of the Judges.

If a recovery be had againſt tenant for life without conſent or covine, though it be without title, and Execution be had, and tenant for life dieth, the reverſion or remainder is diſcontinued, ſo as he in the reverſion or remainder cannot enter; but if ſuch a recovery be had by agreement and covine between the Demandant and the Tenant for life, then, as hath been ſaid, it is a forfeiture of the eſtate for life, and he in the reverſion or remainder may enter for the forfeiture. So it is if the tenant for life ſuffer a common recovery at this day, it is a forfeiture of his eſtate, for a common recovery is a common conveyance or aſſurance, whereof the Law taketh knowledge. Since Littleton wrote there were two ſtatutes (e) made for preſervation of Remainders and Reverſions expectant upon any manner of eſtate for life, the one in 32 H.8. the other in 14 El. but 32 H.8 extended not to recoveries when Tenant for life came in as Voucher, &c. and therefore that act is repealed by 14 El. and full remedy provided for preſervation of the entry of them in reverſion or remainder. But the Statute of 14 El. extendeth not to any recovery, unleſs it be by agreement or covine. Secondly, (f) if there be tenant for life, Remainder in tail, the reverſion or remainder in fee, if tenant for life be impleaded by agreement, and he vouch Tenant in tail, and he vouch over the common Voucher, this ſhall bar the Reverſion or Remainder in fee, although he in the Reverſion or Remainder did never aſſent to the recovery, becauſe it was not the intent of the act to extend to ſuch a recovery, in which a Tenant in tail was vouched, for he hath power by common recovery, if he were in poſſeſſion, to cut off all Reverſions or Remainders. And ſo if tenant for life had ſurrendred to him in remaindr in tail, he might have barred the remainders & reverſions expectant upon his eſtate. Thirdly, where the proviſo of that act ſpeaketh of an aſſent of Record by him in Reverſion or Remainder, it is to be underſtood, that ſuch aſſent muſt appear upon the ſame Record either upon a Voucher, Aid praier, receit, or the like, for it cannot appear of Record, unleſs it be done in courſe of Law, and not by any extrajudicial entry, or by Memorandum.

5. Aſſ. 3. 5 E. 3. entre Cong. 42. li. 1. fol. 13. 16. Sir Will. Pelhams caſe.

(e) 32 H.8. cap. 31. 14. El. cap. 8.

(f) Lib. 3. fol. 66. 67. Lincoln College caſe.

Sect. 691.

¶ Item, ſi tenant en taile diſcontinua le taile, et mozuſt, & ſon iſſue port ſon briefe d' formedon envers le diſcontinue, (eſteant tenant de franktenement del terre) & le diſcontinuee pleda q̄ il neſt tenant, mes outtermēt diſclaima de le tenancy en la terre, en ceſt cas le judgement ſerra q̄ le tenant alaſt ſans jour, & apres tiel

ALſo, if Tenant in tail diſcontinue the tail, and dieth, and his iſſue bringeth his writ of *Formedon* againſt the diſcontinuee (being tenant of the freehold of the land) and the diſcontinuee plead that he is not tenant, but vtterly diſclaimeth from the tenancie in the land; in this caſe the judgement ſhall be that the Tenant goeth without day, and after ſuch

¶ HEre it appeareth that upon the plea of Nontenure or of a diſclaimer of the Tenant in a Formedon in the Deſcender, albeit the erroneous Judgment be that the Tenant ſhall go without day; yet in judgment of Law the Demandant may enter according to the title of his writ, and be ſeiſed in tail, notwithſtanding the diſcontinuance. And here Littleton ſaith the Demandant ſhall be adjudged in his Remitter, where he taketh Remitter in a large ſence; for in this caſe the Demandant hath not two rights, but hath only one antient right, and is reſtored to the ſame by courſe of Law, and ſo Remitter here is taken for a continuance of the right.

5 E. 4. 1. 36 H. 6. 29. 6 E. 3. 8. 4 E. 4. 38.

Non-tenure. Vid. Bract. lib. 5. fol. 331. 432. & 414. Britton. cap. 84.

¶ *Ou le demandant ne recovera damages.* Here is to be obſerved that in ſuch a Præcipe where the Demandant is to recover damages, if the Tenant plead non-tenure or diſclaim, (f) there the Demandant may aver him to be Tenant of his Land, as his writ ſuppoſeth for the benefit of his Damages, which otherwiſe he ſhould loſe, or pray judgment and enter. (g) But where no damages are to be recovered, as in a Formedon in the Deſcender, and the like, there he cannot aver him Tenant, but pray his Judgement and enter; for thereby he hath the effect of his Suite. Et fruſtra fit per plura, quod fieri poteſt per pauciora.

(f) 7. 13 H. 7. 28. 36 H. 6. 29. 22 H. 6. 44. 4 E. 4. 38. 5 E. 4. 1. 6 E. 3. 8.

(g) 8 E. 3. 34. 3 14 E. 3. 9. 21 H. 4. 16. & 7 H. 6. 17.

1 E. 4. 7.

¶ *Averrer.* To aver or avouch, or verifie, verificare, whereof cometh verificatio an averment, and is ſo ſaid as well in Engliſh as in French. And is twofold, viz. general averment, which is the concluſion of every Plea to the writ, or in barr of replications and other pleadings (for Counts or Avowries in nature of Counts need not be averred) containing matter affirmative, ought to be averred, & hoc paratus eſt verificare, &c. Particular averments are, as when the life of Tenant for life, or Tenant in tail are averred, and there though this word (verificare) be not uſed, but the matter avouched and affirmed, it is upon the matter of an averment. And an averment containeth as well the matter as the form thereof.

¶ *Que le Tenant aſt ſans jour.* Quod tenens eat ſine die. This is the entry of the Judgment in that caſe, that the Tenant ſhall go without day, that is to be diſcharged of further attendance, and this is ſome-

judgement liſſue en le taile que eſt demandant poit entrer en la terre, nyent contriſteant le diſcontinuance, et per tiel entry il ſerra adjudge eins en ſon Remitter. Et la cauſe eſt, pur ceo q̄ ſi aſcun home ſuiſt Præcipe quod reddat enders aſcun tenant de franktenement, en quel action l' demandant ne recovera damages, & le tenant pledaſt nontenure, ou autrement diſclaima en le tenancy, le demandant ne poit averrer ſon briefe & dira q̄ il eſt tenant come le brieſe ſuppoſe. Et pur cel cauſe l'demandant apres ceo que judgement eſt done q̄ le tenant a laſt ſans jour, poit entrer & les tenements demands, le quel ſerra aury graund advantage a luy en ley, ſicome il avoit judgement de recoverer enders le tenant, & per tiel entrie il eſt en ſon remitter per force del taile. Mes lou le demand recovera damages enders le tenant, la le demandant poit averrer, q̄ il eſt tenant come le brieſe ſupp, & ceo pur l'advantage

judgment the iſſue in the tail that is demandant may enter into the land, notwithſtanding the diſcontinuance, & by ſuch entry he ſhall be adjudged in his remitter. And the reaſon is, for that if any man ſue a *Præcipe quod reddat* againſt any tenant of the freehold, in which action the demandant ſhall not recover damages, & the tenant pleads non tenure, or otherwiſe diſclaim in the tenancie, the Demandant cannot aver his Writ and ſay that he is tenant as the Writ ſuppoſeth. And for this cauſe the demandant after that the judgement is given that the tenant ſhall go without day, may enter into the tenements demanded, the which ſhall be as great an advantage to him in law, as if he had judgment to recover againſt the tenant, and by ſuch entry he is in his remitter by force of the entail. But where the demandant ſhall recover damages againſt the tenant, there the demandant may aver that he is tenant, as the writ ſuppoſeth, & that for the advan-

del

del demandant p recover les damages, ou autrement il ne recoveroit ses damages, queux sont ou fueront a luy dones per la Ley.

tage of the demandant to recover his damages, or otherwise he shall not recover his damages, which are or were given to him by the Law.

time final for that Action whereof Littleton here putteth an example, and sometime temporary, whereof Littleton also hath put an example, as when excommengement is pleaded in disability of the Plaintiff or Demandant, there the award is, that the Tenant or Defendant shall go without day, and yet when the Demandant or Plaintiff have purchased his Letters of Absolution, upon shewing them to the Court, he may have a resummons or re-attachment to recontinue the cause again. But it is to be known, that when judgement is given for the Tenant or Defendant upon a Plea in bar, or to the writ, &c. the judgement is all one, viz. Quod tenens, or defendens eat inde sine die, and shall have reference to the nature and manner of the plea, and so be taken either to go in bar, or to the writ. So when judgment is given against the Plaintiff, either in bar of his Action, or in abatement of his writ, &c. the judgement is all one, viz. Nihil capiat per breve; and it appeareth by the Record, whether the Plea did go in bar, or to the writ. And the cause of the judgement is never entred in the Record in any case, for that upon consideration had of the Record, it appeareth therein.

Vide Sect. 101.

3 H. 4. 2. 11.

Sect. 692.

¶ Item, si home soit disseisie, & le Disseisor devie, son Heire, esteant eins per descent, ore lentrie de le Disseisée est tolle; & si le disseisée porta son briefe dentrie sur disseisin en le Per, envers l'Heire, & l'Heire disclaime en le tenancy, &c. le Demandant poit averrer son briefe q̄ il est tenant come le briefe suppose, s'il voit, pur recoverer ses damages; mes uncore s'il voit relinquisher le averment, &c. il poit loyalment entrer en la terre per cause del disclaimer, nient obstant q̄ son entrie advant fuit tolle, & ceo fuit adjudge devant mon master Sir R. Dandy iades Chief Justice de la Common Bank, & ses Compagnions, &c.

ALso, if a man be disseised, and the Disseisor die his heir being in by descent, now the entry of the Disseisee is taken away; and if the Disseisee bring his writ of entry *Sur disseisin* in the *per* against the Heire, and the Heir disclaim in the tenancy, &c. the Demandant may aver his Writ that he is Tenant as the Writ supposeth, if he will, to recover his damages; but yet if he will relinquish the averment, &c. he may lawfully enter into the Land because of the Disclaimer, notwithstanding that his Entry before was taken away; and this was adjudged before my Master Sir *R. Dandy* late Chiefe Justice of the Common Pleas, and his Companions, &c.

¶ *Item si home soit disseisie &c.* Albeit in this case, and in the case before, the Entry of the Demandant is his own act, and the Demandant hath no express judgement to recover, yet shall he be remitted, because he in judgement of the Law shall be in accrording to the title of his writ, and by his Entry defeat the Discontinuance, and consequently is remitted to his antient estate. 36 H. fol. 19.

¶ *Sir Robert Dandy* Knight, was a Gentleman of an antient and fair descended Family, and Chief Justice of the Court of Common Pleas, a grave, reverend, & learned Judge 5 E. 4. 41. 4 E. 4. 31.

of whom our Author ſpeaketh here with very great reverence, as you may perceive. And here is to be noted how neceſſary it is, after the example of our Author, to obſerve the judgments and reſolutions of the Sages of the Law.

Sect. 693.

29 Aſſ.p.26. 43 Aſſ.p.3. 11 H.7.20. 3 H.6.19. 40 E.3.43.

HEre appeareth a diverſity betweene a right of Entry, and a right of Action; for if a man of full age having but a right of Action, taketh an eſtate to him, he is not remitted: but where he hath a right of entry, and taketh an Eſtate, he by his entry is remitted, becauſe his entry is lawful; and if the Diſſeiſor enfeoffe the diſſeiſee and others, the diſſeiſee is remitted to the whole, for his entry is lawful: otherwiſe it is if his Entry were taken away.

¶ Item, lou lentry dun home eſt congeable, coment que il prent Eſtate a luy quand il eſt de pleine age, pur terme de vie, ou en Taile, ou en fee, ceo eſt un Remitter a luy, ſi tiel priſel de eſtate ne ſoit per fait indent ou per matter de Record, que concludera ou eſtoppera. Car ſi home ſoit diſſeiſie, & prent Eſtate de le Diſſeiſor ſans fait, ou per fait polle, ceo eſt un remit al Diſſeiſee, &c.

ALſo, where the entry of a man is congeable, although that he takes an eſtate to him when he is of full age, for term of life, or in Tail, or in Fee, this is a Remitter to him, if ſuch taking of the eſtate be not by Deed indented, or by matter of Record, which ſhall conclude or eſtop him: for if a man be diſſeiſed, & takes back an Eſtate from the Diſſeiſor without Deed, or by Deed-poll, this is a Remitter to the Diſſeiſee, &c.

3 R.2.Quar.Imp.199. 19 H.6.30. 8 H.6.17. 21 H.6.2. 3 H.4.8. 14 H.6.15.16.37 H.6.18 26 H.8.4. F.N.B.36.f. & 35.b.

¶ *Lou l' Entrie eſt congeable.* A. is diſſeiſed of a manor, whereunto an advowſon is appendant, an eſtranger uſurps to the Advowſon, if the diſſeiſee enter into the Manor, the Advowſon is recontinued again, which was ſevered by the uſurpation. And ſo it is, if tenant in taile be of a Manor whereunto an advowſon is appendant, the tenant in taile diſcontinueth in Fee, the Diſcontinuee granteth away the Advowſon in fee, and dieth, the iſſue in taile recontinueth the Manor by recovery, he is thereby remitted to the Advowſon, and in both caſes he that right hath ſhall preſent when the Church becometh void.

22 Aſſ.p.33. en le caſe de Theobald Grinvile.

The Patron of a Benefice is outlawed, and the Church becometh void, an Eſtranger uſurpeth, and ſix months paſs, the King doth recover in a Quare impedit, and remove the Incumbent, &c. the Advowſon is recontinued to the rightful Patron. And ſo note a diverſity between a Recontinuance and a Remitter, for a Remitter cannot be properly, unleſs there be two titles, but a Recontinuance may be where there is but one.

13 H.4.5. 3 H.4.17. 8 H.4.8. 12 H.4.19. 35 Aſſ.8. 17 Aſſ.3. 29 Aſſ.53.43 E.3.17. Parkers caſe, 44 E.3. Eſtop.10. 21 H.6. 2. per Paſton. 8 H.6.17. per Cotiſmere.

¶ *Per fait indent, &c.* Here it appeareth, that if the Diſſeiſor by Deed indented make a Leaſe for life, or a Gift in taile, or a Feoffment in fee, whereunto Livery of Seiſin is requiſite, yet the Deed indented ſhall not ſuffer the livery made according to the form and effect of the Indenture, to work any Remitter to the diſſeiſee, but ſhall eſtop the diſſeiſee to claim his former eſtate: and if the Diſſeiſor upon the Feoffment doth reſerve any rent or condition, &c. the rent or condition is good: and the reaſon wherefore a Deed indented ſhall conclude the taker more then the Deed poll is, for that the Deed poll is only the Deed of the Feoffor, Donor, and Leſſor, but the Deed indented is the Deed of both parties; and therefore as well the taker as the giver is concluded.

¶ *Ou per Record.* As by Fine, Deed indented, and enrolled, and the like.

Sect.694.

¶ ITem, ſi home leſſa terre pur terme de vie a un auter, le quel aliena a un auter en fee, & lalienæ fait eſtate a le Leſſor, ceo eſt un Remitter al Leſſor, pur ceo que ſon Entrie fuit congeable, &c.

ALſo, if a man let land for term of life to another, who alieneth to another in fee, and the Alienee make an Eſtate to the Leſſor, this is a Remitter to the Leſſor, becauſe his entry was congeable, &c.

This is evident enough upon that which hath been ſaid.

Sect. 695.

¶ ITem, ſi home ſoit diſſeiſie & le Diſſeiſor leſſa la terre al diſſeiſæ per fait pol, ou ſans fait, pur terme des ans, per q̃ le diſſeiſæ entra, ceſt entre eſt un Remitter a le diſſeiſee. Car en tiel caſe lou lentre dun home eſt congeable, & un Leaſe eſt fait a luy, coment que il claima per parolx en pais, que il ad eſtate per force de tiel leaſe, ou dit overtment que il ne claima riens en la terre ſi non per force de tiel Leaſe, uncore ceo eſt un remitter a luy, car tiel diſclaimer en le pays neſt riens a purpoſe. Mes ſil declaimer en Court de Record que il nad Eſtate forſque per force de tiel Leaſe, & nemy auterment, donqz il eſt concluſe, &c.

ALſo, if a man be diſſeiſed, and the Diſſeiſor let the Land to the Diſſeiſee by deed poll, or without deed, for term of years, by which the diſſeiſee entreth, this entry is a remitter to the diſſeiſee. For in ſuch caſe where the entry of a man is congeable, and a Leaſe is made to him, albeit that he claimeth by words in *Paiis*, that he hath eſtate by force of ſuch Leaſe, or ſaith openly, That he claimeth nothing in the Land but by force of ſuch Leaſe; yet this is a Remitter to him, for that ſuch diſclaimer in *Paiis* is nothing to the purpoſe. But if he diſclaim in court of Record, that he hath no eſtate but by force of ſuch Leaſe, and not otherwiſe, then is he concluded, &c.

¶ HEre appeareth a diverſity between a claim in Paiis of an Eſtate, and a Claim of Recozd; foz a Claim in Paiis ſhall not hinder a Remitter. Otherwiſe it is of a Claim of Recozd, becauſe that doth wozk a Concluſion.

Sect. 696.

¶ ITem, ſi deux Joyntenants ſeiſie de certeine Tenements en Fee, lun

ALſo if two Joyntenants ſeiſed of certain Tenements in Fee, the one being of

¶ HEre note a Diverſity with the obſervation, that where Joyntenants oz Coparceners have one and the ſame Remedy, if the one enter, the

10 H.6.10. 19 H.6.45. 31 H.6.tit.Ent.cong.54.

the other ſhall enter alſo: but where remedies be ſeveral, there it is otherwiſe. As if two Jointenants or Coparceners joyn in a real Action, where their entry is not lawful, and the one is ſummoned and ſevered, and the other purſueth and recovereth the moiety, the other Jointenant or Coparcener ſhall enter and take the profits with her, becauſe their remedy was one and the ſame. But where two Coparceners be, and they are diſſeiſed, and a diſcent is caſt, and they have iſſue and die, if the iſſue of the one recover her moyety, the other ſhall not enter with her, becauſe their remedies were ſeveral; and yet when both hath recovered; they are Coparceners again. So here in this caſe, that Littleton putteth the two joyntenants have not equal remedy, for the infant hath a right of entry, and the other a right of action; and therefore the infant being remitted to a moiety, the other ſhall not enter and take the profits with her.

eſteant de pleine age, lauter deins age ſont diſſeiſies, &c. & le diſſeiſor mouſt ſeiſie, & ſon iſſue entra lun de les Jointenants eſteant adonque deins age, & apres que il vient al pleine age, heire le Diſſeiſor leſſa les Tenements a meſmes les Jointenants pur terme de lour deux vies, ceo eſt un remitter (quant al moiety) a celuy que fuit deins age, pur ceo que il eſt ſeiſie de ceſt moietie que affiert a luy en Fee, pur ceo que ſon entre fuit congeable. Mes lauter Jointenant nad en lauter moiety forſque eſtate pur terme de ſa vie, per force de le leaſe pur ceo que ſ̄ entre fuit tolle, &c.

full age, the other within age, be diſſeiſed, &c. and the Diſſeiſor die ſeiſed, and his Iſſue enter, the one of the Joyntenants being then within age, and after that he cometh to full age, the Heir of the Diſſeiſor letteth the Tenements to the ſame Jointenants for terme of their two lives, this is a remitter (as to the moiety) to him that was within age, becauſe he is ſeiſed of the moiety which belongeth to him in fee, for that his entry was congeable. But the other Joyntenant hath in the other moiety but an eſtate for terme of his life by force of the leaſe, becauſe his entry was taken away, &c.

If A. and B. Jointenants in fee, be diſſeiſed by the father of A. who dieth ſeiſed, his ſon and heir entreth, he is remitted to the whole, and his companion ſhall take advantage thereof. Otherwiſe here in the caſe of Littleton, for that the advantage is given to the Infant, more in reſpect of his perſon than of his right, whereof his companion ſhall take no advantage. But if the Grand-father had diſſeiſed the Joyntenants, and the Land had deſcended to the Father, and from him to A. and then A. had died, the entry of the other ſhould be taken away by the firſt deſcent; and therefore he would not enter with the heir of A.

Vide 35 Aſſ.Pl. ultim.

But here in the caſe of Littleton, if after the deſcent the other Joyntenant had died, and the Infant ſurvived, ſome ſay that he ſhould have entred into the whole, becauſe he is now in judgement of Law, ſolely in by the firſt feoffment, and he claimeth not under the deſcent.

CAP. 13. Of Warranty. Sect.697.

Vide Sect.188.331.

¶ IL eſt *communement dit*. Here by the opinion of Littleton, Communis opinio is of authority, and ſtands with the rule of the Law; A Communi obſervantia non eſt recedendum.

¶ IL eſt cõmunement dit, Que trois Garranties y ſont, ſ̄, Garrantie lineal, Garrantie

¶ IT is commonly ſaid that there be three Warranties, *ſcil.* Warranty Lineall, Warranty Corantie

rantie collateral, et garrantie q̃ comuence p̃ diſſeiſin. Et eſt aſcavoir, q̃ devant l'eſtatute de Glouc', touts garranties queux diſcendont eux queux ſont heires a eur q̃ feſoyent les garranties, fueront barrez a meſmes les heires a demander aſcuns terres ou teuements encounter les garranties, forſprise l'z garranties q̃ commencerent p̃ diſſeiſin, car tiel garrantie ne fuit unq̃ barre al heire, pur ceo q̃ le garrantie commence per tort, ſ. per diſſeiſin.

lateral, and warrantie that commence by diſſeiſin. And it is to be underſtood, that before the Statute of Glouc' all warranties which deſcended to them which are heirs to thoſe who made the warranties, were barrs to the ſame heirs to demand any Lands or Tenements againſt the Warranties, except the Warranties which commence by diſſeiſin. For ſuch warranty was no bar to the heir, for that the Warranty commenced by wrong, *viz.* by diſſeiſin.

dendum: and again, Minime mutandâ ſunt quæ certam habuerunt interpretationem.

Here our Author beginneth this Chapter with an exact diviſion of warranties. A warranty is a Covenant real annexed to Lands or Tenements, whereby a man and his heirs are bound to warrant the ſame, and either upon voucher, or by judgment in a writ of Warrantia chartæ to yeeld other lands and tenements (which in old Books is called in Excambio) to the value of thoſe that ſhall be evicted by a former title, or elſe may be uſed by way of Rebutter.

Bract. l. 2. f. 37. l. 5. f. 380. 381. &c. Glanvil. lib. 3. c. 1, 2, 3 li. 7. cap. 2, 3. lib. 9. cap. 4. Brit. cap. 105. f. 249, 250. &c. & fol. 88. 106. b. 196, 197. Fleta li. 5. cap. 15. Lib. 6. c. 23. Mirr. cap. 2. Sect. 27.

¶ *Rebouter* is a French word, and is in Latine repellere, to repel or bar, that is, in the underſtanding of the Common Law, the action of the heir by the warranty of his Anceſtor; and this is called to Rebut or Repel.

38 E. 3. 21. 45 E. 3. 28.

(c) Britton ſaith, Garranter en (c) Britton fol. 197. b.
un ſence ſignifie defender ſon Tenant en ſa ſeiſin; & en auter ſence ſignifie que ſi il ne defende que le garrant luy ſoit tenue eſchanger, & de faire en gree a la vaillaunce. (d) Bracton ſaith, Warrantizare (d) Bract. lib. 5. fol. 380.
nihil aliud eſt, quam defendere & acquietare tenentem qui warrantum vocavit in ſeiſina ſua. (e) Fleta (e) Fleta lib. 5. cap. 15.
ſaith, Warrantizare nihil aliud eſt quam poſſidentem vocantem defendere & acquietare in ſua ſeiſina vel poſſeſſione erga petentem, &c. & tenens de re Warranti excambium habebit ad valentiam.

It is to be obſerved that there be two kind of warranties, that is to ſay, Warrantia expreſſa & tacita, vulgarly ſaid warranty, in deed, becauſe they be expreſſed in warranties in law, becauſe the Law doth tacitely imply them. And this diviſion of warranties that Littleton here ſpeaketh of, he intendeth of warranties in deed. And of Warranties in Law more ſhall be ſaid hereafter in this Chapter. As for promiſes or contracts annexed to Chattels real or perſonal, they are not intended by our Author in his ſaid diviſion, but only warranties concerning Freholds and Inheritances.

Lib. 4. f. 81. Nokes caſe. Vide Sect. 733.

¶ *Devant le ſtatute de Glouc'.* This ſtatute was made at a Parliament holden at Gloceſter in the fifth year of the reign of King E. 1. and therefore it is called the ſtatute of Glouceſter.

Glouc. cap. 3. Vid. Sect. 724, 725, 727. &c.

¶ *Sont barres a meſmes les heires a demander aſcuns terres, &c.* For the Statute, as hath been ſaid, made in 6 E. 1. (which was before the Statute of Donis conditionalibus which was enacted 13 Edward 1.) when all ſtates of inheritance were fee ſimple. But after the ſtatute of 13 Edward 1. the heir in tail is not barred by the warranty of his Anceſtor unleſs there be aſſets; as ſhall be ſaid hereafter more largely in this Chapter.

Bract. lib. 4. fol. 322. b. Fleta lib. 5. c. 5. 7 E. 3. Gar. 37.

By the ſtatute of Glouceſter four things are enacted.

Firſt, that if a tenant by the courteſie alien with warranty and dieth, that this ſhall be no bar to the heir (in a writ of Mordancestor without aſſets in fee ſimple. And if Lands or tenements deſcend to the heir from the father, he ſhall be barred having regard to the value thereof.

Secondly,

Secondly, that if the heir, for want of aſſets at that time deſcended, doth recover the lands of his mother by force of this Act, and afterwards aſſets deſcend to the heir from the father, then the Tenant ſhall recover againſt the heir the inheritance of the Mother by a writ of Judgment, which ſhall iſſue out of the Record, to reſummon him that ought to warrant, as it hath been done in other Caſes, where the heir being vouched cometh into the Court, and pleadeth that he hath nothing by deſcent.

Thirdly, that the iſſue of the ſon ſhall recover by a writ of Coſinage, Aiel and Baſaiel.

And laſtly, that the heir of the wife after the death of the Father and Mother ſhall be barred of his action to demand the Heritage of the Mother by a Writ of Entry, which his Father alienedin the time of his Mother, whereof no fine was levied in the Kings Court.

Concerning the firſt, there be two points in Law to be obſerved.

(e) 1 E.3.tit.Gar.83. 4 E.3.Gar.63. 18 E 3. 51.Pl.Com.160. 7 E.3. 33 Temps.E.1.Gar.87.

First, albeit the Statute in this article name a writ of Moradnceſter, and after writs of Coſinage, Aiel and Baſaiel (e) yet a writ of Right, a Formedon, a writ of Entry Ad Communem Legem, and all other like actions are within the purview of this Statute, for thoſe actions are put but for examples.

27 E.3.89.14 E.4.Gar.5 Dyer.1.Mar.148.2.

Secondly, where it is ſaid in the ſaid Act, (the Tenant by the courteſie alien) yet this releaſe with warranty to a diſſeiſor, &c. is within the purview of the Statute, for that it is in equal miſchief, and if that evaſion might take place, the Statute ſhould have been made in vain.

21 Aſſ 9.& 37.Temps. E.1.Gar.86.

If Tenant by the Courteſie be of a Seigniory, and the Tenancy eſcheat unto him, and after he alieneth with warranty, this ſhall not bind the iſſue, unleſs aſſets deſcend, for it is in equal miſchief. But notwithſtanding this Statute, if Feme Tenant in dower had alienedin fee with warranty, and died, the warranty had bound the heir until the Statute (*) of 11 H.7. ſince our Author wrote. By which Statute the heir may enter notwithſtanding ſuch warranty

(*)11 H.7.cap.20.

18 E.3.9.

But note, there is a diverſity between a warranty on the part of the mother, and an eſtoppel. For an eſtoppel of the part of the Mother ſhall not bind the heir, when he claimeth from the father. As if Lands be given to the Husband and wife, and to the heirs of the Husband, the husband make a gift in tail, and dieth, the wife recovereth in a Cui in vita againſt the Donee, ſuppoſing that ſhe had fee ſimple, and make a feoffment and dieth, the Donee dieth without iſſue, the iſſue of the Husband and wife bring a Formedon in the Reverter againſt the feoffee, and notwithſtanding that he was heir to the eſtoppel, and the Mother was eſtopped; yet for that he claimed the Land as heir to his Father, he was not eſtopped. Note that warranties are favoured in Law, being part of a mans aſſurance, but Eſtoppels are odious.

21 R.2 Judgment.163.

If a Feme heir of a diſſeiſor infeoffeth me with warranty, and marrieth with the Diſſeiſee, if after the diſſeiſee bring a Præcipe againſt me, I ſhall rebut him, in reſpect of the warranty of his wife, and yet he demandeth the Land in another right. And ſo if the husband and wife demand the right of the wife, a warranty of the collateral anceſtor of the husband ſhall bar.

If a woman had been tenant for life, the remainder or reverſion to her next heir, and the woman had alienedin fee and died, this warranty had barred her heir in Remainder or Reverſion, but it is partly holpen by the ſaid Act of 11 H.7. viz.. where the woman hath any eſtate for life of the inheritance or purchaſe of her husband, or given to her by any of the anceſtors of the husband, or by any other perſon ſeiſed to the uſe of her husband or of any of his anceſtors, there her alienation, Releaſe or Confirmation with warranty ſhall not bind the heir.

11 H.7.cap.20. Vide ſect. 95. See this Statute of 11 H.7.ca. 20.well expounded.Lib. 1.f. 76.in Sir Anthon. Mildmays caſe, 3.& 4. Ph.& M.Dier.146. Lib.3.f. 59,60,61,62. Lincoln Col.caſe. Pl. Com.fol.56,20.El. Dier.302. Doct.& Stud. 55.8 El.Dier.248.19 El. Dier,364.21 El.Ibi.362. lib.3.f.50, 51 Sir Georg. Browns caſe,Lib.5.f.79. Pitzh.caſe. 27 H.8.23.

To the authorities quoted in the margent, which may ſerve as Commentaries upon the ſaid Statute, I will only add two caſes, the one was: (f) A man ſeiſed of Lands in fee levied a fine to the uſe of himſelf for life, and after to the uſe of his wife, and of the heirs males of her body by him begotten for her joynture, and had iſſue male, and after he and his wife levied a fine, and ſuffered a common recovery, the husband and wife died, and the iſſue male entred by force of the ſaid Statute of 11 *H.* 7. And it was holden by the Juſtices of Aſſiſe (the caſe coming down to be tried by Niſi prius) that the entry of the iſſue male was lawful; and yet this caſe is out of the Letter of the ſtatute, for ſhe neither levied the fine, &c. being ſole, or with any after-taken husband, but is by her ſelf with her husband, that made the joynture. Sed qui hæret in litera hæret in cortice; and this caſe being in the ſame miſchief is therefore within the remedy of the ſtatute by the intendment of the makers of the ſame, to avoid the diſheriſon of heirs, who were provided for by the ſaid Joynture, and eſpecially by the husband himſelf that made the joynture, which (as it was ſaid) is a ſtronger caſe than the example ſet down in the ſtatute. The other was, (g) A man is ſeiſed of Lands

(f) Mich.13.Jac. inter Harley & Weſt.in ejectione firmæ in communi Banco Lincoln.

(g) Paſch.17.El.in.

Lands in the right of his wife, and they two leve a fine, and the Conuſee grant and rendereth the land to the husband and wife in ſpecial tail, the remainder to the right heirs of the wife, they have iſſue, the Husband dieth, the wife taketh another husband, and they two leve a fine in fee, and the iſſue entreth, this is directly within the Letter of the Statute; and yet it is out of the meaning, becauſe the eſtate of the land moved from the wife, ſo as it was the purchaſe of the husband in the Letter, and not in meaning. But where the woman is tenant for life, by the gift or conveyance of any other, her alienation with warranty ſhall bind the heir at this day. So if a man be Tenant for life, (otherwiſe than as Tenant by the Courteſie) and alien in fee with warranty, and dieth, this ſhall at this day bind the heir, that hath the Reverſion or Remainder by the Common Law not holpen by any Statute. But all this is to be underſtood, unleſs the heir that hath the Reverſion or Remainder doth avoid the eſtates ſo alienedin the life of the Anceſtor, for then the eſtate being avoided, the warranty being annexed unto the eſtate, is avoided alſo; whereof more ſhall be ſaid in this Chapter in his proper place. And therefore it is neceſſary for the heir in ſuch caſes to make an entry as ſoon as he hath notice or probable ſuſpition of ſuch alienation.

Com. Banco Lattons caſe which I my ſelf heard and obſerved.

Sect. 725.

As to the ſecond clauſe of the Statute of Glouceſter. There are two points of Law to be obſerved.

Firſt, That by the expreſs purview of the Statute, if aſſets do after deſcend from the Father, then the Tenant ſhall have recovery or reſtitution of the Lands of the Mother. But in a Formedon, if at the time of the warranty pleaded, no aſſets be deſcended whereby the Demandant recovereth, if after aſſets deſcend, there the Tenant ſhall have a Scire facias for the aſſets, and not for the Land intailed. And the reaſon hereof is, that if in this caſe the Tenant ſhould be reſtored to the Land intailed, then if the Iſſue in Tail alienedthe aſſets, his iſſue ſhould recover in a Formedon; and therefore the Sages of the Law, to prevent future occaſions of ſuits, reſolved the ſaid diverſity in the caſes abovеſaid, upon conſideration and conſtruction of the Statute of Glouceſter, and the Statute of de donis Conditionalibus.

Pl. Com. Fulmerſtones caſe, 110. a. Li. 8. f. 53. Syms caſe.

Secondly, It is to be obſerved, that after aſſets deſcended, the Recovery ſhall be by writ of judgment, which ſhall iſſue out of the roll of the Juſtices, &c. And here two things are to be declared and explained. Firſt, by what writ, &c. and that is clear, viz. by Scire facias. But the ſecond is more difficult, and that is upon what manner of judgment the Scire facias is to be grounded; for explanation whereof it is to be underſtood, that if the Tenant will have benefit of the Statute, he muſt plead the warranty, and acknowledge the title of the Demandant, and pray that the advantage of the Statute may be ſaved unto him. And then if after aſſets deſcend, the Tenant upon this Record ſhall have a Scire facias. And if aſſets deſcend but for part, he ſhall have a Scire facias for ſo much. But if the Tenant plead the warranty, and plead further that aſſets deſcended, &c. and the Demandant taketh iſſue that aſſets deſcended not, &c. which iſſue is found for the Demandant, whereupon he recovereth, the Tenant, albeit aſſets do after deſcend, ſhall never have a Scire facias upon the ſaid Judgment, for that by his falſe plea he hath loſt the benefit of the ſaid Statute.

Lib. 8. fol. 53. 54. Syms caſe, ib. 134. Mary Shipleys caſe.

Touching the third, ſufficient hath been ſpoken before. For the laſt, it is to be obſerved, That if the Husband be ſeiſed of lands in the right of his wife, and maketh a feoffment in fee with warranty, the wife dieth, and the Husband dieth, this warranty ſhall not bind the heir of the wife without aſſets, albeit the Husband be not Tenant by the courteſie. But of this you ſhall read more hereafter.

8 E. 2. tit. Gar. 81. 18 E. 3. 52.

In the mean time know this, that the learning of warranties is one of the moſt curious and cunning Learnings of the Law, and of great uſe and conſequence.

Vid. Sect. 725.

¶ *A demander aſcuns terres ou tenements.* A warranty may not only be annexed to Freeholds, or Inheritances corporal, which paſs by livery, as Houſes and Lands, but alſo to Freeholds or inheritances incorporeal, which lie in grant, as Advowſons, and to Rents, Commons, Eſtovers, and the like, which Iſſue out of Lands or Tenements. And not only to Inheritances in eſſe, but alſo to Rents, Commons, Eſtovers, &c. newly created. As a man (ſome ſay) may grant a rent, &c. out of Land for life, in tail, or in fee with warranty; for though there can be no title precedent to the Rent, yet there may be a title precedent to the Land, out of which it iſſueth before the grant of the Rent, which Rent may be avoyded by the recovery of the Land, in which caſe the Grantee may help himſelf by a Warrantia Chartæ upon the eſpecial matter. And ſo a warranty in law may extend to a Rent, &c. newly created; and therefore if a rent newly created be granted in Exchange for an acre of Land, this Exchange is good, and every Exchange implieth a warranty in Law. And ſo a rent newly created may be granted for owelty of partition.

2 H. 4. 13 30 H. 8. Dier. 42. Temps, E. 1. admeaſurement 16. 32 E. 1. Voucher. 194. 30 E. 1. Exchange 16. 9 E. 4. 15. E. 4. 9. 19. Aſſ. 13.

Vide Sect.741.
43 E.3.Vouch.72.9 E.3 78.18 E.3.55.30 E.3.30 21 H.7.9.3 H.7.4.7 H.4 17.10 E.4.9,b.21 E.4. 26.14 H.8.6.30 H.8. Dier 42.

A man seised of a rent seck issuing out of the Mannor of Dale, taketh a wife, the husband releaseth to the Ter-tenant, and warranteth Tenementa prædicta, and dieth, the wife bringeth a writ of dower of the Rent, the Ter-tenant shall vouch, for that albeit the release ensured by way of extinguishment, yet the warranty extended to it, and by the warranting of the Land all Rents, &c. issuing out of the Land, that are suspended or discharged at the time of the warranty created, are warranted also.

Sect.698.

¶ *Garrantie que commence per disseisin, &c.* It is called a warranty that commenceth by disseisin, because regularly the conveyance whereunto the warranty is annexed doth work a disseisin.

7 E.3.41.43 E.3.17. 50 E.3.12.Vid.Sect 611.

In this Section Littleton putteth sixe examples of a warranty commencing the Disseisin, viz. of a feoffment made with warranty by Tenant for years, by Tenant at will, by Tenant by Elegit, by Tenant by Statute Merchant, and by Tenant by Statute Staple: all these and the other examples that Littleton putteth of this kind of warranties in the succeeding Sections, have four qualities.

Lib 5.fol. 79.b. Fitzherberts case.

First, that the disseisin is done immediately to the heir that is to be bound; & yet if the father be tenant for life, the remainder to the son in fee, the father by Covin and consent maketh a Lease for years, to the end that the lessee shall make a feoffment in fee to whom the father shall release with warranty, and all is executed accordingly, the father dieth, this warranty shall not bind, albeit the Disseisin was not done immediately to the son; for the feoffment of the Lessee is a disseisin to the father, who is particeps criminis. So it is if one brother make a gift in tail to another, and the uncle disseise the Donee, and enfeoffeth another with warranty, the uncle dieth, and the warranty descendeth upon the Donor, and then the Donee dyeth without

31 E.3 tit. Garrantie.28.

¶ Garranty q̃ commence per disseisin est en tiel form̃, sicome lou il est pier et fits, & le fits purchase terre, &c. et lessa mesme la terre a son pier pur terme dans, & pier per son fait ent enfeoffa un auter en fee, & oblige luy & ses heires a garranty, et le pier devy, per q̃ le garranty descendist al fits, ceo garranty ne barrera my le fits, car nient obstant cel garrantie le fits poit bien enter la terre, ou aver un assise envers l'alienee sil doit, pur ceo q̃ l' garrantie commence per disseisin, car quant le pier q̃ navoit estate forsque pur terme des ans, fist un feoffment en fee, ceo fuit un disseisin al fits de franktenement q̃ adonq̃ fuit en le fits. En mesme le maner est, si le fits lessa a le pier la terre a tener a volunt, & puis le pier fait un feoffemnt ove

WArranty that commence by disseisin is in this manner, as where there is father and son, and the son purchaseth land, *&c.* and letteth the same land to his father for term of years, and the Father by his deed thereof enfeoffeth another in fee, and bind him and his heirs to Warranty, and the father dies, whereby the Warranty descendeth to the son, this warrantie shall not bar the son; for notwithstanding this warranty the son may well enter into the Land, or have an Assise against the Alienee if he will, because the Warranty commenced by disseisin; for when the father which had but an estate for term of years made a feoffment in fee, this was a disseisin to the son of the freehold which then was in the sonne. In the same manner it is if the son letteth to the fa-

garrantie,

garrantie, &c. Et ſi come eſt dit de pier, iſſint poit eſtre dit de chelcun auter auncеſtor, &c. En meſne le maner eſt, ſi Tenant per Elegit, Tenant per Statute Merchant, ou tenant per Statute de le Staple fait feoffment en fee oveſque garrantie, ceo ne barrera my l'heir que doit aver la terre, pur ceo q; tiels garranties commencerent per diſſeiſin.

ther the Land to hold at will, and after the father make a feoffment with Warrantie, &c. And as it is ſaid of the father, ſo it may be ſaid of every other anceſtor, &c. In the ſame manner is it, if Tenant by *Elegit*, Tenant by Statute Merchant, or Tenant by ſtature ſtaple make a feoffment in Fee with warranty, this ſhall not bar the heir which ought to have the Land, becauſe ſuch Warranties commence by diſſeiſin-

iſſue, albeit the diſſeiſin was done to the Done, and not to the Donor; yet the warranty ſhall not bind him. The father, the ſon, and a third perſon are Joyntenants in fee, the father maketh a feoffment in fee of the whole with warranty, and dieth, the ſon dieth, the third perſon ſhall not only avoid the feoffment for his own part, but alſo for the part of the ſon, and he ſhall take advantage that the warranty commenced by Diſſeiſin, though the Diſſeiſin was done to another.

The ſecond quality appearing in Littletons examples is, that the warranty and Diſſeiſin are ſimul & ſemel, both at one and the ſame time. (y) And yet if a man commit a diſſeiſin of intent to make the feoffment in fee with warranty, albeit he make the feoffment many years after the diſſeiſin, notwithſtanding becauſe the warranty was done to that intent and purpoſe, the Law ſhall adjudge upon the whole matter, and by the intent couple the Diſſeiſin and warranty together.

(y) 19 H.3.12. lib. 5. fol. 79. b. Fitzh. caſe.

The third quality is, that the warranty commenceth by diſſeiſin by all theſe examples (if it ſhould bind) it ſhould bind as a Collateral warranty, and therefore commencing by Diſſeiſin ſhall not bind at all.

¶ *Ne barrera my le heir, &c.* For by the authority of our Author himſelfe, a Leſſee for years may make a feoffment, and by his feoffment a fee ſimple ſhall paſs, ſo as albeit as to the Leſſor it worketh by diſſeiſin, yet between the parties the warranty annexed of ſuch eſtate ſtandeth good: upon which the feoffee may vouch the feoffor or his heirs as by force of a lineal warranty. And therefore if a leſſee for years or Tenant by Elegit, &c. or a diſſeiſee incontinent make a feoffment in fee with warranty, if the feoffee be impleaded, he ſhall vouch the feoffor, and after him his heir alſo, becauſe this is a Covenant real, which binds him and his heirs to recompence in value, if they have Aſſets by deſcent to recompence, for there is a feoffment de facto, and a feoffment de jure: (*) And a feoffment de facto made by them that have ſuch intereſt or poſſeſſion, as is aforeſaid, is good between the parties, and againſt all men but only againſt him that hath a right. And therefore if the Lord be Gardein of the Land, or if the tenant maketh a leaſe to the Lord for years, or if the Lord be Tenant by Statute-Merchant or Staple, or by Elegit of the tenancy, and make a feoffment in fee, he hereby doth extinguiſh his Seigniorie, although having regard to the Leſſor it is a Diſſeiſin.

Vide Sect. 611. 699. Bract. fol. 216, 223. 224. Fleta lib. 4. cap. 17. 1, 2. Britton, cap. diſſeiſin. 30 E. 3. 12. b. 9 H. 7. 5. 7 E. 3. 11. 14 E. 3. Feoffments en faits 67. 18 E. 3. Iſſue 36. 4 E. 2. Briefe 790. 19 E. 2. Aſſ. 400. 43 E. 3. 7. 17 E. 3. 41. 43 E. 3. Diſſ. 5. 3 E. 4. 17. 12 E. 4. 12. 10 E. 4. 18. F. N. B. 201. l. 3. fol. 78. in Fermors caſe.

(*) Temps E. 1. Counterplea de Voucher 126. 30 E. 3. ibid. 124. Vide W. 1. c. 48. In the ſecond part of the Inſtitutes.

The fourth quality is a Diſſeiſin, but that is put for an example, and the rather for that it is moſt uſual and frequent, but a warranty that commenceth by abatement or intruſion (that is, when the abatement or intruſion is made of intent to make a feoffment in fee with warranty) ſhall not bind the right heir, no more then a warranty that commenceth by diſſeiſin, becauſe all do commence by wrong. And ſo it is if the tenant dieth without heir, and an Anceſtor or the Lord enter before the entry of the Lord, and make a feoffment in fee with warranty and dieth, this warranty ſhall not bind the Lord, becauſe it commenceth by wrong, being in nature of an abatement. Et ſic de ſimilibus.

Sect. 699.

¶ ITem ſi Gardein en Chivalrie, ou Gardein en Socage

ALſo if Gardein in Chivalrie, or Gardein in Socage make

fait un Feoffment en fee, ou en fee taile, ou pur term de vie ou eſque garrantie, &c. tiels garranties ne ſont pas barres a les Heires, as ſur les terres ſerront diſcendus, pur ceo que ils commence per diſſeiſin.

a Feoffment in fee, or in fee taile, or for life, with Warrantie, &c. ſuch Warranties are not bars to the heirs to whom the Lands ſhall be deſcended, becauſe they commence by diſſeiſin.

16 E. 3. Gar. 20, 8. Aſſ. 2. 43 E. 3. 7. and the Books aboveſaid. Vide Sect. 698.

HEre Littleton addeth the caſe of Gardeine in Chivalrie, and Gardein in Socage, and Gardein, becauſe Nurture is alſo in the ſame caſe.

Sect. 700.

13 Aſſ. 8. 13 E. 3. Gar. 14. 25. 37. 22 H. 6. 51. 8 H. 7. 6.

¶ *Aver & tener a eux joyntment, &c.* This is to be intended of a joynt purchaſe in fee; for if the purchaſe were to the father and the ſon, & the heirs of the ſon, and the Father maketh a Feoffment in Fee with warranty, if the ſon entreth in the life of the father, & the feoffee re-enter, the father dieth, the ſon ſhall have an aſſiſe of the whole. And ſo is the Book of 22 H. 6 to be underſtood. But if the ſon had not entred in the life of the father, then for the fathers moiety it had been a bar to the ſon, for that therein he had an eſtate for life; and therefore the warranty as to that moiety, had been collateral to the ſon, and by Diſſeiſin for the ſans moiety, and ſo a warranty defeated in part, and ſtand good in part. And this appeareth by the example that Littleton hath put. But if the purchaſe had been to the father and ſon, and to theirs of the Father, then the Entry of the ſon in the life of the father, as to avoidance of the warranty, had not availed him, becauſe his father lawfully conveyed away his moiety.

¶ Item, ſi le pier & le fits purchaſe certaine terres ou Tenements, a aver & tener a eux joyntment, &c. & puis le pier alien lentier a un auter, & oblige luy & ſes Heires a Garrantie, &c. & puis le pier devie, cel Garrantie ne barrera my le fits de le moiety que a luy afflert de les dits terres ou Tenements, pur ceo q̄ quaunt a cel moiety que afflert a le fits, le Garrantie commence per Diſſeiſin, &c.

ALſo, if Father and Son purchaſe certaine Lands or Tenements, To have and to hold to them joyntly, &c. and after the father alien the whole to another, and bind him and his heirs to Warranty, &c. and after the father dieth, this Warranty ſhall not bar the ſon of the moiety that belongs to him of the ſaid Lands or Tenements, becauſe as to that moiety which belongs to the ſon, the Warranty commences by diſſeiſin, &c.

Temps E. 1. Vouch. 307. 39 E. 3. 26. John Londons caſe, 14 [illegible]. 6.

If a man of full age and an Infant make a feoffment in Fee with warranty, this warranty is not void in part, and good in part, but it is good for the whole againſt the man of full age, and void againſt the Infant: for albeit the feoffment of an infant paſſing by livery of ſeiſin be voidable, yet his warranty which taketh effect only by deed, is meerly void.

Sect.

Sect. 701.

¶ ITem, ſi A. de B. ſoit ſeiſie dun meaſe, & F. de G. que nul droit ad dentrer en meſme le meaſe, claimaunt meſme le meaſe, a tenera a luy et a ſes Heirs, entra en meſme le meaſe, mes le dit A. de B. adonque eſt continualment demurrant en meſme le meaſe: En ceſt cas le poſſeſſion de franktenement ſerra tout temps adjudge en A. de B. et nemy en F. de G. pur ceo que en tiel caſe lou deux ſont en un meaſe, ou auters Tenements, et lun claima per lun Title, et lauter per lauter Title, la ley adjudgera a celuy en poſſeſſion que ad droit daver le poſſeſſion de meſmes les Tenements. Mes ſi en le caſe avant dit, le dit F. de G. fait un Feoffment a certain Barretors et Extortioners en le pais, pur maintenance de eux aver, de meſme le meaſe per un fait de Feoffement ove garrantie, per force de quel le dit A. de B.

ALſo, if A. of B. be ſeiſed of a Meſe, and F. of G. that no right hath to enter into the ſame Meſe, claiming the ſaid Meſe to hold to him and to his Heirs, entreth into the ſaid Meſe, but the ſame A. of B. is then continually abiding in the ſame Meſe. In this Caſe the poſſeſſion of the Free-hold ſhall be alwayes adjudged in A. of B. and not in F. of G. becauſe in ſuch Caſe where two be in one Houſe or other Tenements, and the one claimeth by one Title, and the other by another Title, the Law ſhall adjudge him in poſſeſſion that hath right to have the poſſeſſion of the ſame Tenements. But if in the caſe aforeſaid the ſaid F. of G. make a feoffement to certain Barretors and Extortioners in the Countrey, to have maintenance from them of the ſaid houſe, by a Deed of feoffment with Warranty, by force whereof the ſaid

¶ *Lou deux ſont en un meſe, &c. & lun claima per lun title, &c.* For the rule is, Duo non poſſunt in ſolido unam rem poſſidere. 19 H. 6. fol. 18. b. per Newton.

The words of our Author be ſignificant and material: (h) for if a man hath iſſue two daughters, Baſtard eigne and Mulier puiſne, & die ſeiſed, & they both enter generally, the ſole poſſeſſion ſhall not be adjudged only in the Mulier, becauſe they both claim by one & the ſame title; & not one by one title, & the other by another title; as our Author here ſaith. (h) 17 E. 3. 59. 11. Aſſ. p. 23.

(i) If the tenant in an aſſiſe of an houſe deſire the plaintiff to dine with him in the houſe, which the plaintiff doth accordingly, and ſo they be both in the houſe, and in truth one pretendeth one title, & the other another title, yet the law in this caſe ſhall not adjudg the poſſeſſion in him that right hath; becauſe our Author here ſaith, he claimed not his right; and it ſhould be to his prejudice if the law ſhould adjudge him poſſeſſion, and a treſpaſſer he cannot be, becauſe he was invited by the Tenant in aſſiſe. (i) Pl. Com. 91. the Parſon of Honey Lanes caſe.

¶ *Barretors.* A Barretor is a common Mover, and Exciter, or Maintainer of ſuits, quarrels, or parts, either in Courts, or elſewhere in the Country. In Courts, as in Courts of Record, or not of Record, as in the County, Hundred, or other inferior courts. In the country in three manners: firſt, in the diſturbance of the peace. Secondly, in taking or keeping of poſſeſſions of lands in controverſie, not only by force, but alſo by ſubtil-

See the Inditement of Common Barretor. W. 1. cap. 12. & 32. 40 E. 3. 33. Lib. 8. fol. 36. b. Caſe de Barretrie.

tie and a deceit; and moſt commonly in ſuppreſſion of truth and right. Thirdly, by falſe inventions, and ſowing of calumniations, rumors, and reports, whereby diſcord and diſquiet may grow between Neighbours.

33 E.1.Stat.de Conſpiracie. Lib.8.ubi ſupra.

¶ *Barretor*, is derived of this word (Barret) which ſignifieth not only a wrangling ſuit, but alſo ſuch brawls and quarrels in the Country, as are aforeſaid.

ne oſaſt pas demurrer en l' Meaſe, mes alas hors de l' meaſe, ceſt Garrantie commence per Diſſeiſin, pur ceo q' ſiel Feoffement fuit la cauſe q' le dit A. de B. relinquiſt le poſſeſſion de meſme le Meaſe.

A. of B. dare not abide in the Houſe, but goeth out of the ſame, this warranty commenceth by diſſeiſin, becauſe ſuch Feoffment was the cauſe that the ſaid A. of B. relinquiſhed the poſſeſſion of the ſame Houſe.

¶ *Extortioner*, Extortion in his proper ſence is a great miſpriſion by wreſting, or unlawfully taking by any officer, by colour of his office, any money or valuable thing of or from any man, either that is not due, or more than is due, or before it be due. Quod non eſt debitum, vel quod eſt ultra debitum, vel ante tempus quod eſt debitum. For this it is to be known, that it is provided by the (l) ſtatute of W.1. That no Sheriff nor any other Miniſter of the King, ſhall take any reward for doing of his Office, but only that which the King alloweth him, upon pain that he ſhall render double to the Party, and be puniſhed at the Kings pleaſure. And this was the antiant Common Law, and was puniſhable by fine and impriſonment, but the Statute added the aforeſaid penalty. But ſome ſome latter Statutes having permitted them to take in ſome caſes, by colour thereof, the Kings Officers and Miniſters, as Sheriffs, Coroners, Eſcheators, Feodaries, Gaolers, and the like, do offend in moſt caſes; and ſeing this Act yet ſtandeth in force, they cannot take any thing, but where, and ſo far as latter Statutes have allowed unto them. But yet ſuch reaſonable fees as have been allowed by the Courts of Juſtice of antient time to inferior Miniſters and Attendants of Courts for their labor and attendance, if it be asked and taken of the Subject, is no extortion.

Pl.Com.fol.64. Lib.10 fol.101,102. Beaufages caſe.

(l)W.1.c.26.&c. W.1. c.10.42 E.3.5.27.Aſſ. 14.Pl.Com.68.

23 H.6.c.10.33 H.6.22. 21 H.7,17.Stanf.49. 3 E.3.Cor.372.

And all this was reſolved (n) by the whole Court of Kings Bench, between Shurley Plaintiff, and Packer Deputy of one of the Sheriffs of London, in an action upon the caſe in the Kings Bench.

(n)Hil.13 Jac.Reg.

See the Statute of 21 H.8.cap.5. ſetting down the Fees of Ordinaries, Regiſters, and other Officers, in certain caſes, and many other Statutes; as for example, the ſtatute of 19 H 7.c.8. againſt taking of ſhewage (that is, taking of any thing for ſhewing of wares, and Merchandiſes that be truly cuſtomed to the King before) and the like.

Pl.Com.in Dene & Manninghams caſe. Mir. cap 5.Sect.1.

Of this term it is ſaid, That it is no other than Robbery: and another ſaith, That it is more odious than Robbery for Robbery is apparent, and hath the face of a crime, but Extortion puts on the diſor of vertue, for expedition of Juſtice, and the like; and it is ever accompanied with that grievous ſin of perjury.

7 E.4.21.

But largely, extortion is taken for any oppreſſion by extort power, or by colour or pretenſe of right, and ſo Littleton taketh it in this place. Extortio is derived from the Verb Extorqueo, and it is called Crimen expilationis, or concuſſionis: And here Barretors and Extortioners are put but for examples; for if the feoffment be made to any other perſon or perſons, the Law is all one.

¶ *Pur maintenance de eux aver.* Maintenance Manutenentia is derived of the Verb Manutenere, and ſignifieth in Law, a taking in hand, bearing up or upholding of quarrels and ſides, to the diſturbance or hindrance of Common right, Culpa eſt rei ſe immicere ad ſe non pertinenti, and ſo is twofold, One in the Countrey and another in the Court. For quarrels and ſides in the Court, (k) the Statutes have inflicted grievous puniſhments. But this kind of maintenance of quarrels and ſides in the country, is puniſhable only at the ſuit of the King, (r) as it hath been reſolved. And this maintenance is called Manutenenti, or Manutentio ruralis, for example, as to take poſſeſſions, or to keep poſſeſſions, whereof Littleton here ſpeaketh, or the like.

(k)1 E.3.cap.14.20 E. 3.cap.4 5. (r)Mich.7.Ja.in the Star-Chamber.

The other is called Curialis, becauſe it is done pendente placito, in the Courts of Juſtice, and this was an Office at the Common Law, and is threefold.

33 E.1.S.. in fine.Regiſt.183.6 E.3.33.12 H. 8.7.9 H 7.21.

First, To maintain, to have part of the Land, or any thing out of the Land, or part of the Debt, or other thing in plea or ſuit, and this is called Cambipartia, Champertie.

The ſecond is, when one maintaineth the one ſide, without having any part of the thing in

Plea

Plea or ſuit, and this maintenance is twofold, general maintenance, and ſpecial maintenance, whereof you ſhall read at large in our Books, which were too long here to be inſerted. 30. Aſſ. 5. 19 E. 4. 3 20 H. 6. 12. 34 H. 6. 2. 11 H. 6. 11. 8 H. 5. 8. 10 E. 4. 19 W. 1. cap. 25. 28. W. 1. c. 49. Artic. ſuper Chart. cap. 11 F. N. B 171, 172. Mirror cap. 1. Sect. 5.

The third is when (u) one laboureth the Jury, if it be but to appear, or if he inſtruct them, or put them in fear, or the like, he is a maintainer, and he is in law called an Embraceor, & an action of maintenance lieth againſt him; and if he take money a decies tantum may be brought againſt him. And whether the Jury paſs for his ſide or no, or whether the Jury give any verdict at all, yet ſhall he be puniſhed as a maintainer or Embraceor; either at the ſuit of the King or party. (u) 13 H. 4. 16 b. F. N. B. 171. 1 H. 6. 30. 37 H. 6. 31.

Here in this caſe that Littleton putteth, the feoffment is void by the Statute (a) of 1 R. 2. for thereby it is enacted, that feoffments made for maintenance ſhall be holden for none, and of no value, ſo as Littleton putteth his caſe at the common Law; for he ſeemeth to allow the feoffment, where he ſaith, tiel feoffment fuit le cauſe, &c. but ſome have ſaid that the feoffment is not void between the feoffor and feoffee, but to him that right hath. (a) 1 R. 2. cap. 9. Vide 27 H. 8. fol. 23.

Now ſince Littleton wrote, there is a notable Statute (b) made in ſuppreſſion of the cauſes of unlawful maintenance (which is the moſt dangerous enemy that Juſtice hath the effect of which Statute is: (b) 32 H. 8. cap. 9.

Firſt, that no perſon ſhall bargain, buy or ſell, or obtain any pretenced Rights or titles.

Secondly, or take, promiſe, grant, or covenant to have any right, or title of any perſon in or to any Lands, Tenements, or hereditaments; but if ſuch perſon which ſo ſhall bargain, &c. their anceſtors, or they by whom he or they claim the ſame have been in poſſeſſion of the ſame, or of the reverſion or remainder thereof, or taken the rents or profits thereof by the ſpace of one whole year, &c. upon pain to forfeit the whole value of the Lands, and the buyer or taker, knowing the ſame, to forfeit alſo the value.

Thirdly, Provided, that it ſhall be lawful for any perſon being in lawful poſſeſſion, by taking of the yearly farm-rents or profits, to obtain, and get the pretenced Right or Title, &c. of any Lands, whereof he or they ſhall be in lawful poſſeſſion.

For the better underſtanding of which ſtatute, you muſt obſerve, that title or right may be pretenced two manner of ways:

Firſt, when it is merly in pretence or ſuppoſition, and nothing in verity.

Secondly, when it is a good right, or title in verity, and made pretenced by the act of the partie, and both theſe are within the ſaid Statute; for example, If A. be lawful owner of Land, and is in poſſeſſion, B. that hath no right thereunto, granteth to, or contracteth for the land with another, the Grantor & the Grantee, (albeit the grant be merly void) are within the danger of the ſtatute. For B. hath no right at all, but only in pretence. If A. be diſſeiſed in this caſe, A. hath a good lawful right, yet if A. being out of poſſeſſion granteth to, or contracteth for the land with another, he hath now made his good right of entry, pretenced within the Statute, and both the Grantor and Grantee within the danger thereof. A fortiori, of a right in action, Quod nota. Pl. Com. fo. 80, &c. Patridges caſe.

It is further to be known, that a right or title may be conſidered three manner of ways.

Firſt, as it is naked and without poſſeſſion. Secondly, when the abſolute right cometh by releaſe, or otherwiſe to a wrongful poſſeſſion, and no third perſon hath either Jus proprietatis, or Jus poſſeſſionis. The third, when he hath a good right, and a wrongful poſſeſſion. As to the firſt, ſomewhat hath been ſaid, and more ſhall be ſaid hereafter. As to the ſecond, taking the former example, if A. be diſſeiſed, & the diſſeiſee releaſe unto him, he may preſently ſell, grant, or contract for the land, and need not tarry a year, for it is a rule upon this Statute, that whoſoever hath the abſolute ownerſhip of any Land, Tenements, or hereditaments (as in this caſe the Diſſeiſor hath) there ſuch owner may at his pleaſure bargain, grant, or contract for the land, for no perſon can thereby be prejudiced or grieved. And ſo if a man mortgage his land, and after redeem the ſame, or if a man recover land upon a former title, or be remitted to an antient right, he may at any time bargain, grant, or contract for the land, for the reaſon aforeſaid. As to the third, if in the caſe aforeſaid the Diſſeiſor dieth ſeiſed, and A. the Diſſeiſee entreth, and diſſeiſe the heir of the diſſeiſor, albeit he hath an antient right, yet ſeeing the poſſeſſion is unlawful if he bargain or contract for the land before he hath been in poſſeſſion by the ſpace of a year, he is within the danger of the ſtatute, becauſe the heir of the diſſeiſor hath right to the poſſeſſion, and he is thereby grieved, & ſic de ſimilibus; and albeit he that hath a pretenced right (and none in verity) getteth the poſſeſſion wrongfully, yet the ſtatute extendeth unto him as well as where he is out of poſſeſſion. Pl. Com. Patridges caſe, ubi ſup. 6 E. 6 Brook tit. Maintenance 38.

Note, the words of the Statute be (any pretenced right) therefore a leaſe for years is within the Statute, for the Statute ſaith not (the right, but any right) and the Offendor ſhall forfeit the whole value of the land. And where the Statute ſpeaketh of rights in the plural number, yet any one right is within the ſtatute. (a) But yet if a man make a leaſe for years to another, to the intent to try the title in an ejectione firmæ that is out of the ſtatute becauſe 23 Eliz. Dier. 374. Pl. Com. Patridges caſe. fol. 87. (a) Mich. 10. & 11 Eliz. 281. inter Finch. & Cockham in Com. Banc.

because it is in a kind of course of law, but if it be made to a great man, or any other, to sway or countenance the cause, that is within this statute.

(b) Lib. 4. fol. 26. Copihold cases. 6 E. 6. tit. maintenance, Brook 38.

Also the statute speaks) of any right or title to any lands, &c.) (b) A customary right, or pretence thereof to lands, holden by Copy, is within this statute.

The said proviso (which is rather added for explanation, than of any necessity) extendeth only to a pretensed right or title and to a good and clear right; & therefore without question, any that hath a just & lawful estate, may obtain any pretensed right by release or otherwise, for that cannot be to the prejudice of any; nay, as hath ben said, a Disseisor that hath a wrongful estate may obtain a release of the Disseisee, and that is not within the body of the act, and consequently standeth not in need of any proviso to protect him.

(c) 34 H. 8. Dier 52.

And therefore (c) if there be tenant for life, the remainder in fee by lawful and just title, he in the remainder may obtain and get the pretensed right or title of any stranger, not only for that the particular Estate, and the remainder are all one, but for that it is a mean to extinguish the seeds of troubles, and suits, and cannot be to the prejudice of any, as hath ben said. And where the statute saith, (being in lawful possession, by taking the yearly rent, &c.) those words are but explanatory, and put for example, for howsoever he be lawfully seised in Possession, Reversion or remainder, it sufficeth though he never took profit. But the matter observable upon this proviso, which is worthy of observation, is, that if a disseisor make a lease for life, lives, or years, the remainder for life, in tail, or in fee, he in remainder cannot take a promise or Covenant, that when the disseisee hath entred upon the Land, or recovered the same, that then he should convey the land to any of them in remainder, thereby to avoid the particular estate, or the interest or estate of any other; for the words of the proviso be, (buy, obtain, get or have by any reasonable way or mean) and that is not by promise or covenant to convey the land after entry or recovery, for that is neither lawful being against the express purview of the body of the act, and not reasonable, because it is to the prejudice of a third person. But the reasonable way or mean intended by the statute, is by release or Confirmation, or such conveyances as amount to as much; and this agreeth with the letter of the law, viz. the pretensed Right or title of any other person, and Rights and Titles are by release or Confirmation, as by reasonable ways and means lawfully transferred and extinct; and the words of promise or covenant, &c. which are prohibited by the body of the act, are omitted in the proviso.

¶ *Relinquist le possession*, &c. This must be understood, that before livery of seisin upon the feoffment, A. de B. departed out of the house, for otherwise the livery and seisin should be void, because A. de B. was in possession. And Littleton here saith, Per un fait de feoffment; so as albeit the deed were made before the departure, it is not material, but the departure must be before the livery of seisin, for that doth work the disseisin. And yet that which Littleton saith is true, that the feoffment was the cause that he relinquished his possession, for otherwise he would not have done it.

But admit that A. de B. had departed for any other cause, yet if F. de G. enter and enfeoffe certain Barretors, or Extortioners, or any other with warranty, this is a warranty that commenceth by disseisin, for that the feoffment worketh a disseisin.

Sect. 702.

See before in the chapter of Releases.

¶ This doth explain that which hath been said before. And albeit Littleton useth the words (and incontinently thereof make a feoffment) and that in this case of Littleton the disseisin and feoffment were made (quasi uno tempore) yet if the disseisin were made to the intent to make a feoffment with warranty, albeit the Feoffment be long after, this, (as hath been said) is a warranty

46 E. 3. 6.

¶ Item, si home que nul droit ad dentrer en auters Tenements, entra en mesmes les tenements, & incontinent en fait un feoffement as auters per son fait ove Garrantie, & deliver a eux seisin, cel Garrantie commence per disseisin

ALso, if a man which hath no right to enter into other tenements enter into the same tenements and incontinently make a Feoffment thereof to others by his deed with Warranty and deliver to them seisin, this Warranty commenceth

sin

ſin, pur ceo que le diſſeiſin et le feoffement fueront faits quaſi uno tempore. Et ſi ceo eſt ley, paies veier en un plee M. 11. Ed. 3. en un briefe de Formedon en le reverter.

by diſſeiſin, becauſe the diſſeiſin and feoffement were made as it were at one time. And that this is Law, you may ſee in a plea. M. 11. E. 3. in a Writ of *Formedon* in the reverter.

that commenceth by diſſeiſin.

¶ *Mich.* 11. *E.* 3. This is miſtaken, and ſhould be (d) 31 E. 3. & ſo is the original, which caſe you ſhall ſee in Maſter Fitzherberts abridgment; for there is no Book at large of that year. Hereby you may perceive that learned men look not only to the caſes reported, but unto Records, as you may ſee Littleton did; for Fitzherbert puts this caſe in print long after, as elſewhere hath been ſhewed. (d) 31 E. 3. tit. Garr. 28.

Sect. 703.

¶ Garrantie lineal eſt, lou home ſeiſie de terres en fee, fait feoffement per ſon fait a un auter, & oblige luy & ſes heires a garrantie, & ad iſſue & mozuſt, et le garrantie deſcendiſt a ſon iſſue, ceo eſt lineal garrantie. Et la cauſe pur ceo q̃ eſt dit lineal garrantie, neſt pur ceo que le garrantie deſcendiſt de le pier a ſon heire, mes la cauſe eſt pur ceo q̃ ſi nul tiel fait ove garrantie fuiſſoit fait per le pier, donque le droit de les tenements deſcenderoit al heire, et l'heire conveyeroit le deſcent de ſon pier, &c.

WArranty lineal is, where a man ſeiſed of lands in fee, maketh a feoffment by his deed to another, and binds himſelf and his heirs to warranty, & hath iſſue and die, and the warranty deſcend to his iſſue, this is a lineal warranty. And the cauſe why this is called lineal warranty, is, not becauſe the warranty deſcendeth from the father to his heir; but the cauſe is, for that if no ſuch deed with warranty had been made by the father, then the right of the tenements ſhould deſcend to the heir, and the heir ſhould convey the deſcent from his father, *&c.*

¶ *Garrantie lineal*, &c. A warranty lineal is a Covenant real annexed to the Land by him which either was owner, or might have inherited the land, and from whom his heir lineal or collateral might by poſſibility have claimed the land as heir from him that made the warranty, whereof Littleton himſelf putteth divers caſes, which ſhall be explained in their proper places. And in this caſe put in this Section Littleton (once for all) ſheweth, that the reaſon of the example here put, is, becauſe if no ſuch alienation with warranty (for ſo is Littleton to be intended) had been made; the very lands had deſcended to the heir; ſo as the caſe being put of lands in fee-ſimple, the alienation without the warranty had barred the heir. And note, that it is call'd a lineal warranty, not becauſe it muſt deſcend upon the lineal heir; for be the heir lineal or collateral, if by poſſibility he might claim the land from him that made the warranty, it is lineal having regard to the warranty, and title of the Land. And alſo it is called lineal, in reſpect that the warranty made by him that had no right, or poſſibility of right to the Land, is called collateral, in regard that it is collateral to the title of the Land. And it is alſo to be obſerved, that in all the caſes that Littleton hath put, or ſhall put, the lineal, or collateral warranty doth bind the heir, and therefore the Succeſſor claiming in another right ſhall not be bound by the warranty of any natural Anceſtor. For which cauſe (c) in a Juris utrum brought by a Parſon of a Church, the collateral warranty of his Anceſtor is no bar, for that he demandeth the Land in the right of his Church in his politick capacity, and the warranty deſcendeth on him in his natural capacity. (d) But ſome have holden that if a Parſon dying an aſſiſe, that a collateral warranty of his Anceſtor ſhall binde him, and their reaſon is, for that the aſſiſe 35 E. 3. Garr. 73. (c) 27 H. 6. Garr. 43. (d) 34 E. 3. Garr. 71.

Aſſiſe is brought of his poſſeſſion and ſeiſin, & he ſhall recover the mean profits to his own uſe; But ſeeing he is ſeiſed of the freehold, wherof the aſſiſe is brought in jure Eccleſiæ which is in another right then the warrantie, it ſeemeth that it ſhould not be any bar in the aſſiſe. The like law is of a Biſhop, Archdeacon, Dean, Maſter of an Hoſpital, and the like of their ſole poſſeſſions, and of the Prebend, Vicar, and the like.

(*) 45. Aſſ. 6. E. 3. 56. Pl. Com 234 & 553, 554

¶ *Et oblige luy & ſes heires.* * King H. 3. gave a Mannor to Edmund Earl of Cornwal, and to the heirs of his body, ſaving the poſſibility of reverter, and died; The Earl before the Statute of W. 2. cap. 1. De donis conditionalibus by deed gave the ſaid Mannor to another in Fee, with warranty in exchange for another mannor, and after the ſaid ſtatute, in the 28 year of E. 1. dieth without iſſue, having aſſets in fee-ſimple, which warranty and aſſets deſcended upon King E. 1. as Coſin germane, and heir of the ſaid Earl, viz. ſon and heir of King Henry the third, brother of Richard Earl of Cornwal, Father of the ſaid Earl Edmund. And it was adjudged, that the King as heir to the ſaid Earl Edmund, was by the ſaid warranty & aſſets barred of the poſſibility of the reverter, which he had expectant upon the ſaid gift, albeit the warranty and aſſets deſcended upon the natural body of King E. 1. as heir to a ſubject, and King E. 1. claimed the ſaid Mannor, as in his reverter in jure Coronæ in the capacity of his body politick, in which right he was ſeiſed before the gift. In this caſe, how by the death of the ſaid Earl Edmund without iſſue, the Kings title by reverter, & the warrantie and aſſets came together, and that the warranty was collateral, yet the King ſhall not be barred without aſſets, as a ſubject ſhall be; and many other things are to be obſerved in this caſe, which the learned Reader will obſerve.

Vide 27 H. 6. Garr. 48. 34 E. 3. Garr. 71.

Vide Sect. 711, 712.

Sect 704

¶ CAr ſi ſoit pier et fits, et le fits purchaſe terres en fee, et le pier de ceo diſſeiſiſt ſon fits, et aliena a un auter en fee per ſon fait: et per meſme le fait oblige luy et ſes heires a garranter meſmes les tenements, &c. et le pier mozuſt, oze eſt le fits barre daver les dits tenements, car il ne poit per aſcun ſuit, ne per auter mean de la ley, aver meſmes les terres per cauſe del dit garrantie, et ceo eſt un collateral garrantie, et uncoze le garrantie deſcendiſt linealment de le pier a le fits.

FOr if there be Father and Son, and the Son purchaſe Lands in fee, and the Father of this diſſeiſeth his Son, and alieneth to another in fee by his deed, and by the ſame deed binde him and his heirs to warrant the ſame Tenements, *&c.* and the father dieth; now is the ſon barred to have the ſaid Tenements; for he cannot by any ſuit, nor by other mean of Law, have the ſame Lands by cauſe of the ſaid warranty. And this is a collateral warranty, and yet the Warranty deſcendeth lineally from the Father to the Son.

Sect. 705.

¶ MEs, pur ceo que ſi nul tiel fait ove garr̃ un eſtre fait, le fits en nul maner puiſſoit conveyer le Title que il ad a les tenements de ſon pier a luy, entant que ſon pier navoit aſcun

BUT, becauſe if no ſuch Deed with Warranty had been made, the Sonne in no manner could convey the Title which he hath to the Tenements from his father unto him, in as much as his fa-

eſtaet

eſtate en droit en les tenements, pur ceo tiel Garrantie eſt appel collateral Garrantie, entant que celuy que fiſt le Garrantie eſt collateral a le title de les tenements, & ceo eſt tant adire que ceſtuy a que le Garrantie deſcendeſt, ne puiſſoit a luy conveyer le title que il ad en les Tenements per my ceſtuy que fiſt le Garrantie, en cas que nul tiel Garrantie fuit fait.

ther had no eſtate in right in the Lands, wherefore ſuch Warrantie is called Collateral warranty, in as much as he that maketh the warranty is collateral to the title of the Tenements, and this is as much to ſay, as he to whom the warranty deſcendeth, could not convey to him the title which he hath in the Tenements by him that made the Warranty, in caſe that no ſuch warranty were made.

¶ Here Littleton putteth an example, proving that it is not called Lineal, becauſe it deſcendeth lineally from the Father to the ſon; for in this caſe the Warranty deſcendeth lineally, and yet is a collateral warranty. In this example you muſt intend that the diſſeiſin was not of intent to alien with warranty to bar the ſon, but here the diſſeiſin being done to the Son, without any ſuch intent, the alienation afterwards with warranty doth bar the Son, becauſe that albeit the warranty doth lineally deſcend, yet ſeeing the title is collateral, that is, that the ſon claimeth not the Land as heir to his Father, therefore in reſpect of the title it is a collateral warranty. And thus doth Littleton agree (c) with the Authority of our Books. So as the diverſities do ſtand thus. Firſt, where the diſſeiſin and feoffment are uno tempore, and where at ſeveral times. Secondly, where the diſſeiſin is with intent to alien with warranty, and where the Diſſeiſin is made without ſuch intent, and the alienation with warranty afterwards made.

5 E.3.14.46.E.3.6. 16 H.8.12.8 R.2.Gar. 100. Vide Sect.716.

(c) 46 E.3.6.5.E.3.14. 19 H.3.12.

Sect. 706.

¶ Item, ſi ſoit aiel, pier, & fits, & le aiel ſoit diſſeiſie, en que poſſeſſion le pier releas per ſon fait ove Garrantie, &c. et mozuſt, et puis aiel mozuſt, oze le fits eſt barre dader les tenements per le Garrantie del pier. Et ceo eſt appel lineal Garrantie, pur ceo qz ſi nul tiel Garrantie fuit, le fits ne puiſſoit conveyer le droit de les Tenements a luy, ne monſtre coment il eſt heire al Aiel forſ-

Alſo, if there be Grandfather, Father and Son, and the Grandfather is diſſeiſed, in whoſe poſſeſſion the Father releaſeth by his deed with Warranty, *&c.* and dieth, & after the Grandfather dieth, now the ſon is barred to have the Tenements by the warranty of the father. And this is called a lineal Warranty, becauſe if no ſuch Warranty were, the ſon could not convey the right of the tenements to him, nor

¶ Here Littleton putteth an example, where the Son muſt claim the Land as heir to his Grandfather, and yet becauſe he cannot make himſelf heir to his Grandfather, but by his father, it is lineal.

1 H.4.33.35 E.3.Gar. 73.

And it is to be obſerved, that the warranty in this caſe deſcended upon the ſon, before the deſcent of the right, which happened by the death of the Grandfather in whom the right was, Vide Littleton cap. de Releaſes, and after in this Chapter, Sect. 707. & 741.

¶ *Per releaſe per ſon fait ove Garrantie.*

(f) It is to be known, that upon every conveyance of Lands, Tenements, or Hereditaments, as upon Fine, Feoffments, Gifts, &c. Releaſes and Confirmations made

(f) 14 E.3. Voucher 108. 16 E.3.ibid.89. 18 E.3.fo.6. 10 E.3. 52.21 E.3.27.11 H.4. 22.44 E.3.Cons de Vouch. 22,12 H.7.1. Vide Sect.733.738.745.

made to the Tenant of the Land, a warranty may be made, albeit he that makes the Releaſe or confirmation, hath no right to the land, &c.

que per meane del Pier.

ſhew how he is Heir to the Grandfather but by means of the Father.

but ſome do hold, That by releaſe or Confirmation, where there is no eſtate created, or tranſmutation of poſſeſſion, a warrantee cannot be made to the Aſſigne.

Sect. 707.

ITem, ſi home ad iſſue deux fits & eſt diſſeiſie, & leigne fits releſſa al diſſeiſor per ſon fait ove Garranty, &c. et mozuſt ſans iſſue, & apres ceo le Pier mozuſt, ceo eſt un lineal Garrantie al puiſne fits, pur ceo que coment que leigne fits mozuſt en la vie le Pier, uncoze pur ceo que per poſſibilitie, il puiſſoit eſtre que ſi puiſſoit conveyer a luy le title del terre per ſon eigne frere, ſi nul tiel Garrantie fuiſſoit. Car il puiſſoit eſtre que apres la mozt le pier, eigne frere entroit en les Tenements & mozuſt ſans iſſue, et donque le puiſne fits conveyera a luy title per leigne fits. Mes en tiel cas, ſi le puiſne fits releſſa ove Garrantie a le Diſſeiſor, & mozuſt ſãs iſſue ceo eſt un Collateral Garrãtie al eigne fits, pur ceo que de tiel terre que fuit al Pier, leigne per nul poſſibilitie poit conveyer a luy le title per meane de le puiſne fits.

ALſo, if a man hath iſſue two Sons, and is diſſeiſed, and the eldeſt ſon releaſe to the Diſſeiſor by his deed with Warranty, &c. and dies without iſſue, and afterwards the father dieth, this is a lineal warranty to the younger Son, albeit the eldeſt Son died in the life of the Father, yet by poſſibility it might have been, that he might convey to him the title of the Land by his elder Brother, if no ſuch warranty had been. For it might be, that after the death of the Father the elder Brother entred into the tenements and died without iſſue, and then the younger ſon ſhall convey to him the title by the elder ſon. But in this caſe, if the younger ſon releaſeth Warranty to the diſſeiſor, and dieth without iſſue, this is a collateral warranty to the elder ſon, becauſe that of ſuch lands as was the fathers, the elder by no poſſibility can convey to him the Title by means of the younger Son.

31 E.3.Gar.73.11 H. 4. 33.

THere Littleton putteth an example, where the Heir that is to be barred by the warranty, is not to make his Deſcent by him that made the warranty, as in the caſe before: and yet becauſe by poſſibility he might have claimed by the eldeſt Son, if he had ſurvived the father; and died without iſſue, and ſo the younger brother might by poſſibility have been heir to him, the warranty is lineal.

And here it is to be noted, that the warranty of the eldeſt ſon deſcended before the right deſcended, whereof more ſhall be ſaid hereafter, Sect. 741. and the opinion of Littleton in this Caſe is holden for Law againſt the opinion in 35 E.3.Garr.73.

9 E.3.16. 38 E.3.21.46. 8.3.26.8 R.3.Gar.101.

Mes en tiel caſe le puiſne fits releaſe ove Garrantie, &c. This warranty in this caſe is collateral to the eldeſt ſon, and to the iſſues of his body: but if the eldeſt Son dieth without Iſſue of his body, then the warranty is lineal to the iſſues of the body of the youngeſt: and ſo the warranty that was collateral to ſome perſons may become lineal to others.

Sect.

Sect. 708.

¶ Item, ſi Tenant en le Taile ad iſſue trois fits, & diſcontinue le Taile en fee, & le mulnes fits releſſa per ſon fait al Diſcontinuee, & oblige luy a ſes heires a Garrantie, &c. & puis le tenant en le Taile moruſt, & le mulnes fits moruſt ſans iſſue, oze leigne fits eſt barre daver aſcun recoverie per briefe de Formedon, pur ceo que le Garrantie del mulnes frere eſt collateral a luy, entant que il ne poit per nul manner conveyer a luy per force del taile aſcun deſcent per le mulnes, & pur ceo eſt un collateral Garrantie. Mes en ceſt Cas ſi leigne fits debie ſans iſſue, oze le puiſſi frere poit bien aver un briefe de Formedon en le deſtender, & recovera meſme le terre, pur ceo qz le Garrantie del mulnes eſt lineal al fits puiſne pur ceo qz il puiſſoit eſtre que per poſſibilitie le mulnes puiſſoit eſtre ſeiſie per force del taile apres la moꝛt ſon eigne Frere, &

Alſo, if Tenant in Taile hath iſſue three ſonnes, and diſcontinue the Taile in fee, & the middle ſon releaſe by his deed to the diſcontinuee, and bind him and his heirs to warranty, &c. and after the tenant in taile dieth, and the middle ſonne dieth without iſſue, now the eldeſt ſon is barred to have any recovery by Writ of *Formedon*, becauſe the Warranty of the middle brother is collateral to him, in as much as he can by no means convey to him by force of the Taile any Deſcent by the middle, and therefore this is a collateral warranty. But in this caſe if the eldeſt ſonne die without iſſue, now the youngeſt brother may well have a Writ of *Formedon* in the deſcender & ſhal recover the ſame land, becauſe the warranty of the middle is lineal to the youngeſt ſon, for that it might be that by poſſibility the middle might be ſeiſed by force of the Taile after the death of his eldeſt

¶ Hereby it alſo appeareth, That a warranty that is collateral in reſpect of ſome perſons, may afterwards become lineal in reſpect of others. Wherevpon it followeth. * That a collateral warranty doth not give a right, but bindeth only a right ſo long as the ſame continueth: but if the collateral warranty be determined, removed, oꝛ defeated, the right is revived; (f) And yet in an Aſſiſe the Plaintiff hath made his title by a collateral warranty.

¶ *Barre*, is a woꝛd common as well to the Engliſh as to the French, of which cometh the Noun, a Barre Barra. It ſignifieth legally a deſtruction foꝛ ever, oꝛ taking away foꝛ a time of the action of him that right hath. And Barra is an Italian woꝛd, and ſignifieth Barre, as we uſe it, & it is called a Plea in Bar, when ſuch a Barre is pleaded. Here Littleton putteth an example of a Barre of an eſtate taile by a collateral warranty. It is to be obſerved, that in ſome Caſes an Eſtate Taile may be barred by ſome Acts of Parliament made ſince Littleton wꝛote, and in ſome Caſes an Eſtate Taile cannot be barred, which might when Littleton wꝛote have been barred. Foꝛ example, if Tenant in Taile leyes a Fine with Proclamations according to the ſtatute, this is a bar to the Eſtate taile, but not to him in reverſion oꝛ remainder, if he maketh his claim oꝛ purſue his action within five years after the eſtate taile ſpent.

(b) If a gift be made to the eldeſt ſonne, and to the heires of his body, the remainder to the father, and to the heirs of his body; the father dieth, the eldeſt ſonne leyeth a Fine with Proclamations, and dieth with-

* 43 Aſſ. 44. 24 H. 8. tit. Taile Br. 7 H. 5. 6. tit. Aſſ. 359. 34 E. 3. Droit. 29. 19 H. 6. 58. 21 H. 7. 40. 5. H. 7. 29. 3 H. 7. 9. b.

(f) 16 Aſſ. p. 16. 27. Aſſ. 74. 29. Aſſ. 30. 43. Aſſ. 8. 14 H. 4. 13. 19 H. 6. 60.

4 H. 7. cap. 24. & 32 H. 8. c. 36.

(b) Baliſon 3 El. & 7. El. Vide lib. 3. fol. 84. le caſe de Fines.

8 R. 2. Gar. 101.

without iſſue, this ſhall bar the ſecond Son; for the remainder deſcendeth to the eldeſt.

donqz le puiſne frere puiſſoit conveyer ſon title de Deſcent per le mulnes.

brother, and the youngeſt brother might convey his title of deſcent by the middle brother.

If tenant in Tail be diſſeiſed, or have right of action, and the Tenant of the Land levie a Fine with Proclamations, and five years paſs, the right of the Eſtate Taile is barred.

(b) 26 H. 8. cap. 13. 33 H. 8. cap. 20. 5 E. 6. cap. 11. Stanf. Pl. Coron. 18.

(b) If tenant in taile in poſſeſſion, or that hath a right of Entry be attainted of High Treaſon, the eſtate taile is barred, and the land is forfeited to the King, and none of theſe were bars when Littleton wrote. A lineal warranty and Aſſets was a barre to the eſtate tail when Littleton wrote, whereof more ſhall be ſaid hereafter.

(c) E. 4. 19. Taltarums caſe.

(c) A common recovery with a voucher over, and judgement to recover in value, was a bar of the eſtate taile when Littleton wrote. (d) And of common recoveries there be two ſorts, viz. one with a ſingle voucher, and another with a double voucher, and that is more common and more ſafe: there may be more vouchers over.

(d) Vide dovant. Sect. 690. Vide l. 3. fol. 5. Cuppledicks caſe & fol 94. 97. 106. Lib. 1. fol. 6. Capels caſe lib. 2. fol. 16. 52. 74 77. Lib. 6. fol. 42. 32. lib. 10. fol. 37. Mary Portingtons caſe.

(e) If the King had made a gift in tail, and the Donee had ſuffered a common Recovery, this ſhould have barred the eſtate taile in Littletons time, but not the reverſion or remainder in the King. And ſo if ſuch a Donee had levied a Fine with Proclamations after the Statute of 4. H. 7. this had barred the eſtate taile, although the reverſion was in the King. (f) But ſince Littleton wrote, a common recovery had againſt tenant in tail of the Kings gift, or ſuch a fine levied by him, the reverſion continuing in the Crown, is no bar to the eſtate taile by the Statute of 34. H. 8. And where the words of the Statute be (whereof the reverſion or remainder at the time of ſuch recovery had, ſhall be in the King) theſe ten things are to be obſerved upon the conſtruction of that Act.

(e) 33 H. 8. tale Br. 41. Pl. com. fol. 555. 29 H. 8. Dier 32.

(f) 34 H. 8. cap. 20.

Firſt, that the eſtate taile muſt be created by a King, and not by any Subject, albeit the King be his heir to the reverſion, for the Preamble ſpeaks of gifts made to Subjects, and none can have Subjects but the King; and alſo in the Preamble it is ſaid (for ſervice done to the Kings of the Realm) and the body of the Act refereth to the Preamble. (g) And therefore if the Duke of Lancaſter had made a gift in tail, and the reverſion deſcended to the King, yet was not that eſtate taile reſtrained by that Statute, and ſo of the like.

(g) Trin. 23 Eliz. inter Dively & Aſhton reſolved in the Court of Wards. Lib. 2. fol. 15. & 16. in Wiſemans caſe. Lib. 8. fol. 77, 78. the Lord Staffords caſe. Lib. 2 fol. 15, 16. Wiſemans caſe. Lib. 2. fol. 52. Chalmleys caſe.

Secondly, If the King grant over the reverſion, then a recovery ſuffered will barre the eſtate taile, becauſe the King had no reverſion at the time of the recovery.

Thirdly, If the King make a gift in taile, the remainder in taile, or grant the reverſion in tail, keeping the reverſion in the Crown, a recovery againſt tenant in taile in poſſeſſion ſhall neither bar the eſtate tail in poſſeſſion by the expreſs purview of the Statute, nor by conſequence the ſtate in remainder or reverſion, for that the reverſion or remainder cannot be barred, but where the eſtate taile in poſſeſſion is barred.

Fourthly, If a Subject make a gift in tail, the Remainder to the King in fee, albeit the words of the Statute be (whereof the reverſion or remainder of the ſame, &c.) yet ſeeing the eſtate in tail was not created by a King, as hath been ſaid, the eſtate taile may be barred by a common recovery.

Fifthly, If Prince *Henry* Son of *Henry* the ſeventh, had made a gift in taile, the Remainder to *Henry* the ſeventh in fee, which remainder by the death of *Henry* the ſeventh had deſcended to *Henry* the eighth, ſo as he had the remainder by deſcent, yet might tenant in taile, for the cauſe aforeſaid, bar the eſtate taile by a common recovery.

Lib. 2. fol. 16. Wiſemans caſe.

Sixthly, The word (Remainder) in the Statute is no vain word, for the words of the Preamble be, The King hath given or granted, or otherwiſe provided to his ſervants and Subjects. The word (Reverſion) in the body of the Act hath reference to theſe words (given or granted,) and (Remainder) hath reference to theſe words (otherwiſe provided,) As if the King in conſideration of Money, or aſſurance of land, or for other conſideration by way of proviſion, procure a Subject by deed indented and inrolled, to make a gift in taile to one of his ſervants and ſubjects for recompence of ſervice, or other conſideration, the remainder to the King in fee, & all this appear of Record, this is a good proviſion within the Statute, and the Tenent in Tail cannot by a common recovery barre the eſtate taile. So it is if the remainder be limited to the King in tail: but if the remainder be limited to the King for years or for life, that is no ſuch remainder, as is intended by the Statute, becauſe it is of no Remainder of continuance, as it ought to be, as it appeareth by the Preamble, and it ought to have ſome affinity with a Reverſion, wherewith it is joyned.

Seventhly, where a common recovery cannot bar the ſtate taile by force of the ſaid Statute, there a fine levied in fee, in taile, for lives or years, with Proclamations according to the Statutes ſhall not bar the ſtate taile, or the iſſue in tail, where the Reverſion or Remainder

mainder is in the King as is aforeſaid, by reaſon of theſe words in the ſaid Act, (the ſaid recovery, or any other thing or things hereafter to be had, done, or ſuffered by or againſt any ſuch Tenant in tail to the contrary notwithſtanding) which words include a fine levied by ſuch a donee, and reſtraineth the ſame. So reſolved Paſch 31 El. Rot. 1645. in Notleys caſe in Communi banco.

Eighthly, But where a common recovery ſhall bar the eſtate taile, notwithſtanding that Statute, there a fine with proclamations ſhall bar the ſame alſo.

Ninthly, where the ſaid latter words of the ſtatute be (had, done, or ſuffered by or againſt any ſuch Tenant in Tail) the ſenſe and conſtruction is, where tenant in tail is party or privie to the act, be it by doing or ſuffering that which ſhould work the bar, and not by meer permiſſion, he being a ſtranger to the Act.

As if tenant in tail of the gift of the King, the reverſion to the King expectant, is diſſeiſed, and the diſſeiſor levie a fine, and five years paſs, this ſhall bar the Eſtate tail: and ſo if a collateral Anceſtor of the Donée releaſe with warranty, and the Donée ſuffer the warranty to deſcend without any entry made in the life of the Anceſtor, this ſhall bind the tenant in taile, becauſe he is not party or privie to any act, either done or ſuffered by or againſt him. So holden Trin. 39 Eliz. Rot. 1914. inter Stratford & Dover in Communi banco.

Tenthly, albeit the preamble of the ſtatute extend only to gifts in tail made by the Kings of England before the Act (viz. hath given & granted, &c.) and the body of the Act referreth to the preamble (viz. that no ſuch feined recovery hereafter to be had againſt ſuch tenant in tail) ſo as this word (ſuch) may ſeem to couple the body and the preamble together; yet in this caſe (ſuch) ſhall be taken for ſuch in equal miſchief, or in like caſe, and by divers parts of the Act it appeareth, that the makers of the act intended to extend it to future gifts, and ſo is the Law taken at this day without queſtion.

A recovery in a writ of Right againſt tenant in taile without a voucher, is no bar of any gift in tail. 33 E. 3. judgement 2, 3. 3 H. 6. 55. 10 H 6. 5. 14 E. 4. 5. b. 15 E. 4. 8. F.N.B. 134. b. Pl. Com: 237. 28 E. 3. 95. F.N.B. 28. I.

If tenant in tail, the remainder over in fée ceſſe, and the Lord recover in a Ceſſavit, this ſhall not bar the eſtate taile, for the iſſue ſhall recover in a Formedon: neither were either of theſe bars when Littleton wrote. But let us now hear Littleton.

Sect. 709.

¶ Item, ſi Tenant en taile diſcontinua l' Tail & ad iſſue & devie, & l' Uncle del iſſue releſſa al diſcontinuée ove Garrantie, &c. & morust ſans iſſue, ceo eſt collateral Garrantie al iſſue en tail pur ceo que le Garrantie diſcendist ſur l'iſſue, le quel ne poit ſoy conveyer a le tail per meane de ſon Uncle.

Alſo if Tenant in Taile diſcontinue the taile and hath iſſue and dieth, & the Uncle of the iſſue releaſe to the Diſcontinuee with warranty, &c. and dieth without iſſue, this is collateral warranty to the iſſue in tail, becauſe the warranty deſcendeth upon the iſſue that cannot convey himſelf to the entaile by means of his Uncle.

¶ The reaſon wherefore the Warranty of the Uncle having no right to the Land entailed ſhall bar the iſſue in taile, is, for that the Law preſumeth that the Uncle would not unnaturally diſherit his lawful heir, being of his own blood, of that right which the Uncle never had, but came to the heir by another meane, unleſs he would leave him greater advancement. Nemo preſumitur alienam poſteritatem ſuæ prætuliſſe. And in this caſe the Law will admit no proof againſt that which the Law preſumeth. And ſo it is of all other collateral warranties; for no man is preſumed to do any thing againſt nature. Pl. Com. fol 307. a in Sharingtons caſe.

(k) And the like holdeth in ſome other Caſes, as if a rent be behind for twenty years, and the Lord make an Acquittance for the laſt that is due, all the reſt are preſumed to be paid, and the Law will admit no proof againſt this preſumption. (k) 11 H. 4. 55. 10 Eliz. Dier 272.

(l) So if a man be within the four Seas, and his wife hath a child, the Law preſumeth that it is the child of the husband, and againſt this preſumption the Law will admit no proof. (l) 7 H. 4. 9.

(m) If a man that is innocent be accuſed of felony, and for fear flieth for the ſame, albeit (m) 3 E. 3. Coron Suan.

beit he judicially acquitteth himſelf of the Felony; yet if it be found that he fled for the felony, he ſhall notwithſtanding his innocency forfeit all his goods and chattels, debts and duties; for as to the forfeiture of them the Law will admit no proof againſt the preſumption in Law grounded upon his flight; and ſo in many other caſes. But yet the general rule is, Quod ſtabitur preſumptioni, donec probetur in contrarium. But as you ſee, it hath many exceptions.

Bracton lib. 1. cap. 9.

(n) It hath been attempted in Parliament, that a Statute might be made, that no man ſhould be barred by a warranty collateral but where Aſſets deſcend from the ſame Anceſtor: but it never took effect, for that it ſhould weaken common aſſurances.

(n) Rot. Parliament. 30 E. 3. num. 77.

Sect. 710.

¶ *And iſſue deux files.* If husband and wife, Tenants in ſpecial taile, have iſſue a daughter, and the wife die, the husband by a ſecond wife hath iſſue another daughter, and diſcontinueth in fee and dieth, a collateral Anceſtor of the daughters releaſeth to the diſcontinuee with warranty and dieth, the warranty deſcendeth upon both daughters, yet the iſſue in taile ſhall be barred of the whole; for in judgement of Law the entire warranty deſcendeth upon both of them.

5 E. 2. Gar. 78. lib. 8. fol. 41 Syms caſe.

¶ *Et leigne enter en lentiertie, & ent fait un Feoffement, &c.* Here it is to be underſtood, that when one Coparcener doth generally enter into the whole, this doth not deveſt the eſtate which deſcended by the Law to the other, unleſs ſhe that doth enter claimeth the whole, and taketh the profits of the whole, for that ſhall deveſt the freehold in Law of the other Parcener.

See before in the Chapter of Deſcent. Sect. 96.

Otherwiſe it is after the Parceners be actually ſeiſed, the taking of the whole profits or any claime made by the one cannot put the other out of poſſeſſion without an

¶ Item, ſi le tenant en Taile ad Iſſue deux files & morust, & leigne entra en le entierty & ent fait un feoffmē en fee ove garrantie, &c. & puis leigne file morust ſans iſſue, en ceſt cas le puiſne file eſt barre quant al un moiety, & quant al auter moiety, el neſt pas barre. Car quant a la moiety que affiert a le puiſne file el eſt barre, pur ceo que quant a cel part el ne poit conveyer deſcent per my le maine de ſon eigne ſoer, & pur ceo quant a cel moiety, ceo eſt un collateral Garrantie. Mes quant al auter moiety que affiert a ſon eigne ſoer, le Garrantie neſt pas barre a le puiſne ſoer, pur ceo q̄ el poit conveyer ſon diſcent, quant a cel moiety que affiert a ſon eigne ſoer per meſme le eigne ſoer, iſſint quant a ceſt moiety que affiert al eigne ſoer, le Garran-

Also, if the tenant in taile hath iſſue two daughters and dieth, and the elder entreth into the whole, and thereof maketh a feoffment in fee with warranty, &c. and after the elder daughter dieth without iſſue: In this caſe the younger daughter is barred as to the one moiety, and as to the other moiety ſhe is not barred. For as to the moiety which belongeth in the yonger daughter, ſhe is barred, becauſe as to this part ſhe cannot convey the deſcent by means of her eldeſt ſiſter, and therefore as to this moiety, this is a collateral warranty. But as to the other moiety, which belongeth to her elder ſiſter, the warranty is no bar to the yonuger ſiſter, becauſe ſhe may convey her deſcent as to that moiety which belongeth to her elder ſiſter by the ſame eldeſt ſiſter, ſo as to this moiety which be-

tie

tie eſt lineal al puiſne ſoer.

longeth to the elder ſiſter, the warranty is lineal to the younger ſiſter.

Sect. 711.

ET nota q̃ quant a celuy que demanda fee ſimple per aſcũ de ſes auncesters, il ſerra barre per Garrantie lineal que diſcendiſt ſur luy, ſi non que ſoit reſtraine per aſcun eſtatute.

AND note, that as to him that demandeth fee ſimple by any of his Anceſtors, he ſhall be barred by Warranty lineal which deſcendeth upon him, unleſs he be reſtrained by ſome Statute.

Sect. 712.

MES il q̃ demande fee taile per briefe de Formedon en deſcender, ne ſerra my barre p̃ lineal Garrantie, ſi nõ q̃ il ad Aſſets p̃ deſcent en fee ſimple per meſme launceſter q̃ fiſt le Garrantie. Mes collateral Garrantie eſt barre a celuy q̃ demanda fee, & auxy a celuy que demanda fee taile ſans aſcun auter deſcent de fee ſimple, ſi non en caſes queux ſont reſtraines per les Eſtatutes, & auters caſes pur certaine cauſes, come ſerra dit en apres.

BUt he that demandeth Fee Taile by Writ of *Formedon* in *deſcender*, ſhall not be barred by lineal Warrantie, unleſs he hath Aſſets by deſcent in Fee ſimple by the ſame Anceſtor that made the Warranty. But collateral Warranty is a barre to him that demandeth fee, and alſo to him that demandeth Fee Taile without any other deſcent of Fee ſimple, except in caſes which are reſtrained by the Statutes, and in other caſes for certain cauſes, as ſhal be ſaid hereafter.

actual putting out or diſſeiſin. And in this caſe of Littleton, when one Coparcener entreth into the whole, and maketh a feoffment of the whole, this deveſteth the freehold in Law out of the other Coparcener. Now ſeeing the entrie, in this caſe of Littleton, deveſted not the eſtate of the other Parcener, if no further proceeding had bẽn, then it is to be demanded, that ſeeing the feoffment doth worke the wrong, and be the wrong either in a diſſeiſin, or in nature of an abatement, how can the warranty annexed to that feoffment that wrought the wrong be collateral or bind the youngeſt ſiſter for her part? To this it is anſwered, that when the one ſiſter entreth into the whole, the poſſeſſion being void, and Pl. Cam. 343. maketh a feoffment in fee, this Act ſubſequent doth ſo explaine the entry precedent into the whole, that now by conſtruction of Law ſhe was only ſeiſed of the whole, and this feoffment can be no diſſeiſin, becauſe the other ſiſter was never ſeiſed, nor any abatement, becauſe they both made but one heir to the Anceſtor, and one freehold and inheritance deſcended to them. So as in judgement of Law the warranty doth not commence by diſſeiſin or by abatement, and without queſtion her entry was no intruſion.

Tenant in taile hath iſſue two daughters, and diſcontinueth in fee, the youngeſt diſſeiſeth the diſcontinuee to the uſe of her ſelfe and her ſiſter, the diſcontinuee ouſteth her, againſt whom ſhe recovereth in an Aſſiſe, the eldeſt agreeth to the Diſſeiſin, as ſhe may, againſt her ſiſter, and becomes joyntenant with her. And thus is the Booke in the 21. Aſſiſe (a) to be intended, the caſe being no other in effect, but A. diſſeiſeth one to the uſe of himſelfe and B, B. agreeth, by this he is joyntenant with A. (a) 21 Aſſ. p. 19.

¶ *Et nota que quant a celuy que demanda fee ſimple, &c.* In theſe two Sections there are expreſſed four legal concluſions:

3 E.3 22. 4 E 3.18.50. 6 E 3.56. 7 E. 3. 54-57. 9 E.3.16. 10.E.3.14. 25 E.3.Gar.27. 20 E.3. Ibid.39. 15 E 3. 0. 27 E.3.83. 41 E.3. Gar. 10. Mich. 38 E. 3. Coram Rege Abbot de Colcheſters caſe 45. Aſſ.6. Pl.Com.554. 19 E.4.10. Vide ſect.703. 747.

Firſt, That a lineal warranty doth bind the right of a Fée-ſimple.

Secondly, That a lineal warranty doth not bind the right of an eſtate taile, for that it is reſtrained by the Statute of Donis conditionalibus.

Thirdly, That a lineal warranty and Aſſets is a barre of the right in taile, and is not reſtrained, as hath been ſaid, by the ſaid Act.

Fourthly, That a Collateral warranty made by a Collateral Anceſtor of the Doné, doth bind the right of an eſtate taile, albeit there be no Aſſets; and the reaſon thereof is upon the Statute of Donis conditionalibus, for that it is not made by the Tenant in taile, &c. as the lineal warranty is.

To this may be added, that the warranty of the Doné in taile, which is collateral to the Donor, or to him in remainder, being heir to him, doth bind them without any Aſſets. For though the alienation of the Donée after iſſue doth not bar the Donor, which was the miſchief provided for by the Act, yet the warranty being collateral doth bar both of them; for the Act reſtraineth not that warranty, but it remaineth at the Common Law, as Littleton after ſaith: and in like manner the warranty of the Donée doth bar him in the remainder.

Fleta li.2.c.65. Britton 185. 4 E.3. Gar. 63. 16 E.3. Aſſ.4. 43 E.3.9. 7 H.6.3. 11 H.4.20.

¶ *Aſſets* (id eſt) quod tantundem valet, ſufficient by deſcent.

Note, Aſſets requiſite to make a lineal warranty a barre muſt have ſix qualities. Firſt, it muſt be Aſſets (that is) of equal value, or more, at the time of the Deſcent. Secondly, it muſt be of deſcent, and not by purchaſe or gift. Thirdly, as Littleton here ſaith, it muſt be Aſſets in fee ſimple, and not in tail, or for another mans life. Fourthly, it muſt deſcend to him as heir to the ſame Anceſtor that made the warranty, as Littleton here ſaith. Fifthly, it muſt be of lands or tenements, or rents, or ſervices valuable, or other profits iſſuing out of lands or tenements, and not perſonal inheritances, as Annuities, and the like. Sixthly, it muſt be in ſtate or intereſt, and not in uſe or right of actions, or rights of entry; for they are no Aſſets until they be brought into poſſeſſion. (a) But if a rent in fée ſimple iſſuing out of the land of the heir deſcend unto him, whereby it is extinct, yet this is Aſſets; and to this purpoſe hath in judgement of Law a continuance.

24 E. 3. 47.

(a) 31 E.3.Aſſ.5.13 E.3 Recovery in value 17. Lib.3.fol.31. Butler and Bakers caſe.

(b) 14 E.3.Meſne 7. Regiſtrem 293.

(c) Fleta lib 2.cap. 65. Britton fo. 185. Extent manerii 5 H. 7.37. 32 H.6.21. 33 H.3. Gar. 102.

(b) A Seigniory in fée almoigne is no Aſſets, becauſe it is not valuable, and therefore not to be extended; and ſo it ſeemeth of a Seigniory of Homage and Fealty. But an advowſon is Aſſets, wherof (c) Fleta ſaith, Item de Eccleſiis quæ ad donationem domini pertinent quot ſunt & quæ, & ubi, & quantum valeat quælibet Eccleſia per annum ſecundum veram ipſius æſtimationem, & pro marca ſolidis extendatur, ut ſi Eccleſiis centum marcas valeat per annum, ad centum ſolidos extendatur advocatio per annum. And herewith agreeth Britton, and others have reckoned a ſhilling in the pound; and Britton addeth further, Mes ſi la advowſon puiſt eſtre vendue, adonques ſerr' le reaſonable price ſolonque le value en un an a cel extent; wherein it is to be obſerved, that antiquity did ever reckon by marks.

Sect. 713.

¶ ITem ſi terre ſoit done a un home & a les heires de ſon corps engendres, le quel prent feme, & ont iſſue fits enter eux, & le baron diſcontinua le taile en fée, & devie, & puis la feme releſſa al diſcontinuee en fée ove Garrantie, &c. & mourſt, & le Garrantie deſcendiſt a le fits, ceo eſt un collateral Garrantie.

ALſo if land be given to a man and to the heires of his body begotten, who taketh wife, and have iſſue a ſon between them, and the husband diſcontinues the tail in fee and dieth, and after the wife releaſeth to the diſcontinuee in fee with warranty, &c. and dieth, and the warranty deſcends to the ſon, this is a collateral Warranty.

¶ This caſe ſtandeth upon the ſame reaſon that divers other formerly put by our Author do, viz. that becauſe the heir claimeth only from the Father Per formam doni, and nothing from the wife, that therefore the warranty of the wife is collateral, and the warranty made by any Anceſtor Male or Female of the wife bindeth; and here the warranty deſcended after the deſcent of the right.

Sect.

Sect. 714.

¶ Mes ſi Tenements ſoyent dones a le baron et a ſa feme, et a les Heires de lour deux corps engendres, queux ont iſſue fits, et le baron diſcontinua le taile et mozuſt, & puis la Feme releſſa ove Garrantie et mozuſt, ceſt Garrantie neſt forſque un lineal Garrantie a le fits : Car le fits ne ſerra barre en ceo cas de ſuer ſon breve de Formedon, ſinon que il ad aſſets per deſcent en Fée ſimple per ſa mere, pur ceo que lour l'iſſue en Brieſe de Formedon covient conveyer a luy le droit come heire a ſon pere et a ſa mere de lour deux corps engendres, per forme del done, et iſſint en tiel caſe, le Garrantie de le Pere, et l'Garrantie de la mere ſont forſque lineal Garrantie al heire, &c.

But if lands be given to the husband and wife, and to the heirs of their two bodies begotten, who have iſſue a ſon, and the Husband diſcontinue the tail and dieth, and after the wife releaſe with warranty and dieth, this warranty is but a lineal warranty to the Son. For the Son ſhall not be barred in this caſe to ſue his writ of *Formedon*, unleſs that he hath Aſſets by deſcent in fee ſimple by his Mother, becauſe their iſſue in the Writ of *Formedon* ought to convey to him the right as heir to his father and Mother of their two bodies begotten, *Per formam doni*; and ſo in this caſe the warrantie of the father and the warranty of the Mother are but lineal warrantie to the heir, *&c.*

¶ Here is a point worthy of obſervation, that albeit in this caſe the iſſue in tail muſt claim as heir of both their bodies, yet the warranty of either of them is lineal to the iſſue, and yet the iſſue cannot claim as heir to either of them alone, but of both. 33 E. 3. tit. Gar. 73.

If lands be given to a man and to a woman unmarried, and the heirs of their two bodies, and they entermarry, and are diſſeiſed, and the husband releaſe with warranty, the wife dieth, the husband dieth, albeit the Donees did take by moyeties, yet the warranty is lineal for the whole, becauſe, as our Author here ſaith, the iſſue muſt in a Formedon convey to him the right as heir to his father and his mother of their two bodies engendred, and therefore it is collateral for no part.

Sect. 715.

¶ Et nota que en cheſcun cas ou home demanda Tenements en fee Taile per Brieſe de Formedon, ſi aſcun del iſſue en le Taile que avoit poſſeſſion ou que navoit aſcun poſſeſſion fait un Garrantie, &c. ſi celuy que ſuit le Brieſe de Formedon puiſſoit per aſcun poſſibility per matter que puiſſoit eſtre en fait, conveyer a luy per my celuy que fit le Gar-

And Note, That in every caſe where a man demandeth lands in fee tail by writ of *Formedon*, if any of the iſſue in tail that hath poſſeſſion, or that hath not poſſeſſion, make a warranty, &c. if he which ſueth the writ of *Formedon* might by any poſſibility by matter which might be in fait, convey to him, by him that made the warranty *Per form' doni*, this is a li-

rantie per forme del done, ceo eſt un lineal Gar', & nemy collateral.

neal Warrantie and not collateral.

35 E. 3. Garr. 73.

¶ Of this ſufficient hath been ſaid before, Sed nunquam nimis dicitur quod nunquam ſatis dicitur, for it is a point of great uſe and conſequence.

Sect. 716.

¶ ITem, ſi home ad iſſue trois fits, & il dona Terre al eigne fits, a aver et tener a luy et a les Heires de ſon corps engendres, et pur default de tiel Iſſue, le remainmainder al mulnes fits, a luy, & a les Heires de ſon corps engendres, et pur default de tiel iſſue del mulnes, le remainder al puiſne fits et les heires de ſon corps engendres, en ceſt cas ſi l'eigne diſcontinua la Taile en fee, et oblige luy et ſes Heires a Garrantie, et morust ſans iſſue, ceo eſt un collateral Garrantie al mulnes fits, & ſerra barre a demaunder meſme la Terre per force del remainder, pur ceo que le remainder eſt ſon title, & ſon eigne frere eſt collateral a cel title, que commence per force del remainder. Et meſme le maner eſt, ſi le mulnes fits avoit meſme la Terre per force del remainder pur ceo que ſon eigne frere ne fiſt aſcun diſcontinuance, mes morust ſans iſſue de ſon corps, et puis le mulnes fait un diſcontinuance ove Garrantie, &c. et morust ſans iſſue, ceo eſt un collateral Garrantie a le puiſne fits. Eſt auxy en ceſt caſe ſi aſcun de les dits fits ſoit deſeiſie, et l'pere que fiſt le done, &c. releſſa a le diſſeiſor tout ſon droit ove Garrantie, ceo eſt un collateral Garrantie a celuy fits ſur que le Garrantie deſcendeſt, Cauſa qua ſupra.

ALſo, if a man hath Iſſue three Sons and giveth land to the eldeſt Son, to have and to hold to him and to the heirs of his body begotten, and for default of ſuch iſſue, the remainder to the middle Son, to him and to the heirs of his body begotten, and for default of ſuch iſſue of the middle Son, the remainder to the youngeſt Son and to the heirs of his body begotten; in this caſe, if the eldeſt diſcontinue in tail in fee, and bind him and his heirs to warranty, and dieth without iſſue, this is a collateral warranty to the middle Son, and ſhall be a bar to demand the ſame land by force of the remainder, for the remainder is his title, and his elder brother is collateral to this title which commenceth by force of the remainder. In the ſame manner it is, if the middle Son hath the ſame land by force of the remainder, becauſe his eldeſt Brother made no diſcontinuance, but died without iſue of his body, & after the middle make a diſcontinuance with warranty, *&c.* & dieth without iſſue, this is a collateral warranty to the youngeſt Son. And alſo in this caſe, if any of the ſaid Sons be diſſeiſed, and the father that made the gift, *&c.* releaſeth to the diſſeiſor all his right with warranty, this is a collateral warranty to that Son upon whom the warranty deſcendeth, *Cauſa qua ſupra.*

Sect.

Sect. 717.

¶ ET ſic Nota, Que lou home que eſt collateral a le Title, & ceo releaſe ove Garrantie, &c. ceo eſt un Collateral Garrantie.

AND ſo Note, That where a Man that is collateral to the Title, and releaſeth this with Warrantie, *&c.* this is a collateral Warrantie.

¶ HEre it appeareth, that it is not adjudged in law a Collateral warranty, in reſpect of the blood, for the warranty may be Collateral, albeit the blood be lineal, and the warranty may be lineal, albeit the blood be Collateral, as hath been ſaid. But it is in law deemed a Collateral warranty, in reſpect that he that maketh the warranty is collateral to the title of him upon whom the warranty doth fall, as by the example which Littleton here putteth, and by that which hath been formerly ſaid, is manifeſt. 8 R.2.Gar.101.V.Sect. 704.

Sect. 718.

¶ ITem, Pier dona Terre a ſon eigne fits, a aver & teñ a luy, et a les heires Males de ſon corps engendres, le Remainder a le ſecond fits, &c. ſi leigne fits alienaſt en fee oveſqz Garrantie, &c. et ad iſſue female, et mozuſt ſans iſſue male, ceo neſt pas collateral garrantie al ſecond fits, car il ne ſerra barre de ſon action de formedon en le remainder, pur ceo que le garrantie deſcendiſt al file del eigne fits, et nemy al ſecond fits. Car cheſcun Garrantie que deſcendiſt, deſcendiſt a celuy que eſt heire a luy que fiſt le Garrantie per le Common ley.

ALſo, if a father giveth land to his eldeſt ſon, to have and to hold to him and to the heirs males of his body begotten, the remainder to the ſecond Son, *&c.* if the eldeſt Son alieneth in fee with warranty, *&c.* and hath iſſue female, and dieth without iſſue male, this is no collateral warranty to the ſecond ſon, for he ſhall not be barred of his action of *Formedon* in the remainder, becauſe the warranty deſcended to the daughter of the elder Son, and not to the ſecond Son: for every Warranty which deſcends, deſcendeth to him that is heir to him that made the Warranty by the Common law.

¶ HEre is rehearſed a Maxime of the common Law, that every warrantie doth deſcend upon him that is heir to him that made the warrant y; by the common Law, as by this example it appeareth. Vid.Sect.3.603.715. 736.737.

¶ *A celuy que eſt heire a luy que fiſt le garrantie per le Common ley*, &c. Hereupon many things worthy to be known are to be underſtood. (a)40 E.3.14.

(a) Firſt, that if a man infeoffeth another of an acre of ground with warranty, and hath iſſue two ſons, and dieth ſeiſed of another acre of land, of the nature of Burrough English, the feoffee is impleaded, albeit the warranty deſcendeth only upon the eldeſt Son, yet may he vouch them both: the one as heir to the warranty, and the other as heir to the land: for if he ſhould vouch the eldeſt Son only, then ſhould he not have the fruit of his warranty, viz. a recovery in value, the youngeſt ſon only he cannot vouch, becauſe he is not heir at the Common Law, upon whom the warranty deſcendeth.

(b) So it is of heirs in Gavelkind, the eldeſt may be vouched as heir to the warranty (b)22 E.4.10.4 E.3.35. 27 H.6.1.3.11 E.3. Dct.7.

ranty, and the other ſons in reſpect of the inheritance deſcended unto them. (c) And in like ſort, the Heir at the Common Law, and the heir of the part of the mother ſhall be vouched. But the Heir at the Common law may be vouched alone in both theſe caſes, at the election of the tenant, & ſic de ſimilibus. (d) In the ſame manner, if a man dieth ſeiſed of certain lands in fee, having iſſue a Son and a Daughter by one venter, and a Son by another, the eldeſt Son entreth and dieth, the lands deſcends to the ſiſter: In this caſe the warranty deſcendeth on the Son, and he may be vouched as heir, and the Siſter as heir of the Land: In which and the other caſe of Borough English, the Son and heir by the Common law having nothing by deſcent, the whole loſs of the recovery in value lieth upon the heirs of the land, albeit they be no heirs to the warranty. Then put the caſe that there is a warranty Paramount, who ſhall deraign that warranty? and to whom ſhall the recompence in value goe? Some have ſaid that as they are vouched together, ſo ſhall they vouch over, and that the recompence in value ſhall enure according to the loſs, and that the effect muſt purſue the cauſe, as a recovery in value by a warranty of the part of the Mother ſhall go to the heir of the part of the Mother, &c.

(c) 19 Aſſ.4.38.E.3.22.

(d) 12 E.3.Vouch.94. 5 H.6.33.

pl. Com.515.

Some others hold, That it is againſt the Maxim of Law, that they that are not heirs to the warranty ſhould joyn in Voucher, or to take benefit of the warranty which deſcended not to them, but that the heir at the Common Law, to whom the warranty deſcended, ſhall deraign the warranty, and recover in value, and that this doth ſtand with the rule of the Common Law.

Others hold the contrary, and that this ſhould be both againſt the rule of law, and againſt reaſon alſo; for by rule of law (e) the Vouchee ſhall never ſue to have execution in value, until execution be ſued againſt him. But in this caſe execution can never be ſued againſt the heir at the Common law, therefore he cannot ſue to have execution over in value. Secondly, It ſhould be againſt reaſon, that the heir at the common law ſhould have totum lucrum, and the ſpecial heirs, totum damnum. I find in our Books, (f) that this reaſon is yeelded, that the ſpecial heir ſhould not be vouched only: For (ſay they) if the ſpecial heirs ſhould be vouched only, then could not they deraign the warranty over, which ſhould be miſchievous, that they ſhould loſe the benefit of the warranty, if they ſhould be vouched only. But if the heir at the Common law were vouched with them, (as by the law he ought) all might be ſaved; and therefore ſtudy well this point, how it may be done.

(e) 7 E.2.tit. Recovar in value 33.1.E.3.12. 33 E.3.Judgm.212. 24 E.3.ibid.1 0.10 E.3. 52 18 E.3.51.lib 1.fol. 96.Shelleys caſe.

(f) 12 E.3.Vouch.94. per Green.

(g) If tenant in general Tail be, and a common recovery is had againſt him and his wife, where his wife hath nothing, and they vouch, and have judgment to recover in value, Tenant in tail dieth, and the wife ſurviveth: for that the iſſue in tail had the whole loſs, the recompence ſhall enure wholly to him; and the wife, albeit ſhe was party to the judgment, ſhall have nothing in the recompence, for that ſhe loſeth nothing.

(g) Vid.Pl.Com.fo 514.

(h) If Baſtard eigne enter & take the profits, he ſhall be vouched only, & not the Baſtard and the Mulier, becauſe the Baſtard is in appearance heir, and ſhall not diſable himſelf.

(h) 17 E.3.59 20.E.3. Vouch 129.31 E.3. Vouch 94.5 H.7 2.

(i) If a man be ſeized of Lands in Gavelkind, and hath iſſue three ſons, and by Obligation bindeth himſelf and his heirs and dieth, an action of debt ſhall be maintainable againſt all the three ſons, for the heir is not chargeable, unleſs he hath lands by deſcent.

(i) 11 H.7.12, 14 E.3. tit. Det.7.Di.5. El. 238.

(k) So if a man be ſeiſed of Land on the part of his Mother, and bind himſelf and his heirs by obligation, and dieth, an action of debt ſhall lie againſt the heir on the part of the Mother, without naming of the heir at the Common Law. And ſo note a diverſity between a perſonal lien of a Bond, and a real lien of a warranty.

(k) 11 H.7.12.

Sect.719.

THere it appeareth, That (l) whenſoever the Anceſtor taketh any eſtate of Freehold, a limitation after in the ſame conveyence to any of his heirs, are words of limitation, and not of purchaſe, albeit in words it be limited by way of remainder: and therefore here the remainder to the heirs females veſteth in the Tenant in Tail himſelf,

(l) 24 E.3.36.27 E.3. age.108.38 E.3.26. 40 E.3.9.37 H.8.Br. Neſme 1.& 40.& tit. Done & em.51.

NOta, ſi terre ſoit done a un home, et a les heires males de ſon corps engendres, et pur default de tiel Iſſue, le Reſm ent a ſes heires females de ſon corps engendres, & puis le

NOte, If Land be given to a man and to the heir males of his body begotten, and for default of ſuch Iſſue the Remainder thereof to his Heires Females of his body begotten, and after the

done

donee en le taile fait feoffment in fee ovesque Garrantie accordant, & ad issue fits & file & mourust, cel Garrantie nest forsque lineal Garrantie a le fits a demaunder per briefe de Formedon en le descender, & aury il nest forsque lineal a le file, a demander mesme la terre per briefe de Formedon en le remainder, si non frere deviast sans issue male, pur ceo que el claime come heire female de le corps son pere engendres. Mes en cest cas, si son frere en sa vie relessast al Discontinuee, &c. ove Garrantie, &c. & puis mourust sauns issue, ceo est un collateral Garrantie a le file, pur ceo que el ne poit conveyer a luy le droit que el ad per force de le remainder per aucun mean de descent per son frere, pur ceo que le frere est collateral a le title sa soer, & pur ceo son Garrantie est collateral, &c.

donee in taile maketh a Feoffment in Fee, with warranty accordingly, and hath issue a son and a daughter & dieth, this warrantie is but a lineal warranty to the son to demand by a writ of *Formedon* in the descender; and also it is but lineal to the daughter to demand the same Land by Writ of *Formedon*, in the remainder, unless the brother dieth without issue male, because she claimeth as heir female of the body of her Father ingendred. But in this case, if her Brother in his life release to the discontinuee, &c. with Warranty, &c. and after dieth without issue, this is a collateral Warranty to the daughter, because she cannot convey to her the right which she hath by force of the remainder by any means of descent by her brother, for that the brother is collateral to the title of his sister, and therefore his warranty is collateral, &c.

known, that for Learning sake, and to find out the reason of the Law, these limitations to the heirs males of the body, and after to the heires females of the Body may be put; but it is dangerous to use them in conveyances, for great inconveniences may arise thereupon; for if such a Tenant in Taile hath issue divers sons, and they have issue divers daughters, and likewise if tenant in Taile hath issue divers daughters, and each of them hath issue sonnes, none of the daughters of the sonnes, nor the sonnes of the daughters shall ever inherit to either of the said estates Taile: and so it is of the Issues of the issues, for that (as hath been said) the issues inheritable must make their claime either onely by Males, or only by Females, so as the Females of the Males, or Males of the Females are wholly excluded to be inheritable to either of the said Estates Taile: but where the first limitation is to the heires Males, let the limitation be, for default of such issue to the heires of the Body of the Donee, and then all the Issues, be they Female of Males, or Males of Females, are inheritable.

If a man give Lands to a man, To have and to hold, to him and the heirs Males of his body, and to him and to the heires Females of his body, the estate to the heirs Females is in remainder, and the daughters shall not inherit any part, so long as there is issue Male, for the estate to the heirs males is first limited, and shall be first served; and it is as much to say, and after to the heirs females, & Males in construction of Law are to be preferred.

1 H. 6. 4. 11 H. 6. 13. 14. 18 H. 6. Devise 18. Statham. Devise Pl. Com. 414. 20 H. 6. 43. Vid. Litt. c. taile. Sect. 24. 37. H. 3. Br. donc & rem. 61. & tit. nosme 1. & 40.

Sect.

Sect. 720.

ITem, jeo ay oye dire que en temps le Roy Richard le ſecond, il y fuit un Juſtice del Common Banke, demurrant en Kent, appel Richel, que avoit iſſue diverſ fits, & ſon entent fuit, que ſon eigne fits averoit certaine terres & tenements a luy, & a les heirs de ſon Corps engendres, & pur default diſſue, le remainder a le ſecond fits, &c. & iſſint a l' tierce fits, &c. & pur ceo que il voile que nul de ſes fits alieneroit, ou ferroit Garrantie pur barrer ou leder les auters queux ſerront en le remainder, &c. il fiſt faire tiel Indenture, a tiel effect, ceſt aſcavoir, que les terres & tenements fueront dones a ſon eigne fits ſur tiel condition que ſi leigne fits aliena en fee, ou en fee taile, &c. ou ſi aſcun de ſes fits alienaſt, &c. que adonque lour eſtate creſera, & ſerroit void, & que adonqs meſme les terres & tenements immediat remaindront a le ſecond fits, & a les Heires de ſon corps engendres, & ſic ultra, l' remainder as auters de ſes fits, & livery de ſeiſin eſt fait accordant.

ALſo, I have heard ſay, that in the time of King *Richard* the ſecond, there was a Juſtice of the Common Pleas, dwelling in *Kent*, called *Richel*, who had iſſue divers ſons, and his intent was, that his eldeſt ſon ſhould have certain lands and tenements to him & to the heirs of his body begotten, and for default of iſſue, the remainder to the ſecond ſon, &c. and ſo to the third ſon, &c. and becauſe he would that none of his ſonnes ſhould alien or make warranty to bar or hurt the others that ſhould be in the remainder, &c. he cauſeth an indenture to be made to this effect, *viz.* That the Lands and tenements were given to his eldeſt ſonne upon ſuch condition, that if the eldeſt ſon alien in fee, or in fee tail, &c. or if any of his ſons alien, &c. that then their eſtate ſhould ceaſe and be void, and that then the ſame lands & tenements immediately ſhould remain to the ſecond ſon, and to the heirs of his body begotten, *& ſic ultra*, the remainder to his other ſons, and livery of ſeiſin was made accordingly.

21 H.6.f.33.l.6.f.42.b. Sir Anthony Mildmaies caſe.

(l) Jeo ay oye dire, &c. Thoſe things that one hath by credible hear-ſay, by the example of our Anceſtors, are worthy of obſervation. This invention deviſed by Juſtice Richel in the reign of King Richard the Second, who was an Iriſh-man born, and the like by Thomas Chief Juſtice, in the reign of Henry the Fourth, were both full of imperfections, for Unum Anni in ſenectute eſt perfectum, and Sepæ viatorem nova, non vetus, orbita fallit. And therefore new inventions in Warrances are dangerous. And hereby it may appear, that it is not fafe for any man (be he never ſo learned) to be of counſel with himſelf in his own caſe, but to take advice of other great and learned men.

Non proſunt Dominis quæ proſunt omnibus, artes.

And the reaſon hereof is, In ſuo quiſque negotio hebetior eſt, quam in alieno.

(m) And the ſame Judge in his own name, &c. brought an Action upon his caſe againſt others, and obtained a verdict, ſo as the right of the cauſe was tried on his ſide; yet for that upon his own ſhewing in his Court the Action did not lie, Ex aſſenſu omnium Juſticiariorum præter quærentem Richel, judgement was given againſt him; but let us now leave this Judge for example to others, and let us return to our Author.

(m) 2 H.4.fol.11. in Action ſur le caſe.

Sect.

Sect. 721.

¶ MEs il ſemble per reaſon, que touts tiels remainders en la forme avantdit ſont voides & de nul value, & ceo pur trois cauſes. Un cauſe eſt; pur ceo que cheſcun remainder que commence per un fait, il covient que le remainder ſoit en luy a que l'remainder eſt Taile per force de meſme le fait, avant liverie de ſeiſin eſt fait a luy que avera le franktenement, car en tiel caſe le neſſance & le eſtre de le remainder eſt per le livery de ſeiſin a celuy que avera le franktenement, & tiel remainder ne fuit al ſecond fits, al temps de livery de ſeiſin en l'cas avantdit, &c.

But it ſeemeth by reaſon, that all ſuch remainders in the form aforeſaid are void and of no value, and that for three cauſes. One cauſe is, for that every remainder which beginneth by a Deed, it behooveth that the remainder be in him to whom the remainder is entailed by force of the ſame Deed, before the livery of ſeiſin is made to him which ſhall have the freehold, for in ſuch caſe the growing and the being of the Remainder is by the Livery of ſeiſin to him that ſhall have the freehold, and ſuch remainder was not to the ſecond ſonne at the time of the Livery of ſeiſin in the caſe aforeſaid, &c.

¶ Here our Author is of opinion, that theſe Remainders in the form aforeſaid, are void and of no value, for three cauſes.

¶ *Un cauſe eſt &c.* Here he ſetteth down a rule concerning remainders, viz. Every remainder which commenceth by a deed ought to veſt in him to whom it is limited, when livery of ſeiſin is made to him that hath the particular eſtate.

Firſt, Littleton ſaith, by Deed, (n) becauſe if Lands be granted and rendred by Fine for life, the remainder in tail, the remainder in fee, none of theſe remainders are in them in the remainder, until the particular eſtate be executed.

(n) 7 R. 2. Scire fac.

Secondly, that the remainder be in him, &c. at the time of the livery. This is regularly true; but yet it hath divers exceptions. Firſt, unleſs the perſon that is to take the remainder be not in rerum natura, (o) as if a leaſe for life be made, the remainder to the right heirs of I.S, I.S. being then alive, it ſufficeth that the inheritance paſſeth preſently out of the Leſſor, but cannot veſt in the heir of I.S. for that living his father he is not in rerum natura, for non eſt hæres viventis; ſo as the remainder is good upon this Contingent, viz. if I.S. dye during the life of the Leſſee.

(o) 12 H. 6. tit. Feoffm. & faits 99. 27 E. . 87. 11 R. 2. Detinue, 46. 2 H. 7. 13. 12 H. 7. 27. 12 E. 4. 2. 21 H. 7. 11. 7 H. 4. 23. 12 H. 4. 74. 18 H. 8. 3. 27 H. 8. 42. 38 E. 3. 16. 30 Aſſ. 47. 6 R. 2. qu. Jur. dam. 20.

(p) And ſo it is if a man make a leaſe for life to A. B. and C. and if B. ſurvive C. then the remainder to B. and his heirs. Here is another exception out of the ſaid rule, for albeit the perſon be certain yet inaſmuch as it depends upon the dying of B. before C. the remainder cannot veſt in C. preſently. And the reaſon of both theſe caſes in effect is, becauſe the remainder is to commence upon limitation of time, viz. upon the poſſibility of the death of one man before another, which is a common poſſibility.

A man letteth lands for life upon condition to have fee, and warranteth the land in forma prædicta, afterward the leſſee performeth the condition, whereby the leſſee hath fee, the warranty ſhall extend & increaſe according to the ſtate. And ſo it is in that caſe, if the leſſor had died before the performance of the condition, the warranty ſhall riſe and increaſe according to the eſtate, & yet the leſſor himſelf was never bound to the warranty, but it hath relation from the firſt livery. And by this it appeareth that a warranty being a covenant real executory may extend to an eſtate in futuro, having an eſtate whereupon it may work in the beginning. But if a man grant a Seigniory for years, upon Condition to have fee with a warranty,

(p) Pl. Com. in Colthirſt. caſe, fol 25, 29.

warranty in forma predicta, and after the condition is performed, this ſhall not extend to the fee, becauſe the firſt eſtate was but for years, which was not capable of a warranty. And ſo it is, if a man make a leaſe for years, the remainder in fee, and warrant the land in forma prædicta, he in the remainder cannot take benefit of the warranty, becauſe he is not party to the Deed, and immediately he cannot take, if he were party to the Deed, becauſe he is named after the Habendum, and the eſtate for years is not capable of a warranty. And ſo it is if Land be given to A. and B. ſo long as they jointly together live, the remainder to the right heirs of him that dieth firſt, and warrant the Land in forma prædicta. A. dieth, his heir ſhall have the warranty, and yet the remainder veſted not during the life of A. for the death of A. muſt precede the remainder, and yet ſhall the heir of A. have the Land by deſcent.

Sect. 722.

¶ *Si le primer fits alienaſt, &c.* By the alienation of the Donee two things are wrought.

Firſt, the Franktenement and fee is in the alienee.

Secondly, the Reverſion is veſted out of the Donor (q) And therefore by the alienation that transferreth the free-hold & fee ſimple to the alienee there can no rem. be raiſed and veſted in the ſecond ſon. (r) As if a man make a leaſe for life upon Condition, that if the Leſſor grant over the Reverſion, that then the leſſee ſhal have fee, if the leſſor grant the reverſion by fine, the leſſee ſhal not have fee; for when the Fine transferreth the fee to the Conuſee, it ſhould be abſurd and repugnant to reaſon, that the ſame fine ſhould work an eſtate in the Leſſee; for one alienation cannot veſt an eſtate of one and the ſame land to two ſeveral perſons at one time.

In a mans own grant, which is ever taken moſt forcibly againſt himſelf, the reaſon of Littleton doth hold; for it hath been reſolved by the Juſtices (ſ) that if a man ſeiſed of an advowſon in fee by his deed granteth the next preſentation to A. and before the Church becometh void by another Deed grant the next preſentation of the ſame Church to B. the ſecond grant is void; for A. had the ſame granted to him before, and the Grantee ſhall not have the ſecond avoidance by conſtruction, to have the next avoidance, which the grantor might lawfully grant; for the grant of the next avoidance do not import the ſecond preſentation. (t) But if a man ſeiſed of an advowſon

(q) 21 H.7.11. 27 H. 8. 24.

(r) 6 R.2. quid juris dam.20.

Argumentum ex abſurdo.

(ſ) 20 H. Preſentments al Egliſe, Br. 52.33.H. 8.ibid.55. 29 H.8.Dyer. 35.11 El.282,283.

(t) 15 H.7.7. 19 E.3. quar. Imp.154.

¶ LE ſecond cauſe eſt, ſi le primer fits alienaſt les tenements en fee, adonques eſt le franktenement, & le fee ſimple en lalienee, & en nul auter, & ſi le donour avoit aſcun reverſion, per tiel alienation le reverſion eſt diſcontinue, donques coment per aſcun reaſon poit ceo eſtre, que tiel rem commencera ſon eſt, a ſon neſſance immediate apres tiel alienation fait a un eſtrange, que ad per meſme l'alienation franktenement, & fee ſimple, &c. Et auxy ſi tiel remainder ſerroit bone, adonques purroit il enter ſur l'alienee, lou il navoit aſcun manner de droit avant lalienation, que ſerra inconvenient.

THe ſecond cauſe is, if the firſt ſon alien the Tenements in fee, then is the free-hold and the fee ſimple in the Alienee, and in none other, and if the Donor had any Reverſion, by ſuch alienation, the Reverſion is diſcontinued, then how by any reaſon may it be, that ſuch remainder ſhall commence his being and his growing immediately after ſuch alienation made to a ſtranger, that hath by the ſame alienation a freehold and fee ſimple, &c. And alſo if ſuch remainder ſhould be good, then might he enter upon the Alienee, where he had no manner of right before the alienation, which ſhould be inconvenient.

ſon in fee take wife, now by act in Law is the wife intitled to the third preſentation, if the husband die before: the husband grant the third preſentation to another, the husband die, the heir ſhall preſent twice, the wife ſhall have the third preſentation, and the Grantee the fourth; for in this caſe it ſhall be taken the third preſentation, which he might lawfully grant; and ſo note a diverſity between a title by act in Law, and by act of the party; for the act in Law will work no prejudice to the Grantee.

¶ *Auxi ſi tiel remainder ſerroit bone, &c.* The force of this Argument is, that ſeeing the Eſtate of the Alienee (albeit the words of the Condition be, that the Eſtate ſhould ceaſe and be void) being an Eſtate of inheritance in lands or tenements cannot ceaſe or be void before the Eſtate be defeated by entry, then if this remainder ſhould be good, then muſt it give an entry upon the Alienee to him that had no right before, which ſhould be againſt the expreſs rule of the Law, viz. that an entry cannot be given to a ſtranger to avoid a voidable act, as before hath been ſaid in the Chapter of Conditions.

¶ *Le quel ſerr' enconvenient.* Here note three things. Firſt, that whatſoever is againſt the rule of Law is inconvenient. Secondly, that an argument Ab inconvenienti is ſtrong to prove it is againſt Law, as often hath been obſerved. Thirdly, that new inventions (though of a learned Judge in his own profeſſion) are full of inconvenience. Periculoſum eſt res novas & inuſitatas inducere. Vide Sect. 87, &c.

Eventus varios res nova ſemper habet.

Sect. 723.

¶ LA tierce cauſe eſt, quand la condition eſt tiel, que ſi leigne fits alienaſt &c. que ſon eſtate ceſſera ou ſerroit void, &c. donqrs apres tiel alienation, &c. poit le donor enter per force de tiel condition, com il ſemble, & iſſint le Donor ou ſes heires en tiel caſe doyent pluis toſt aver la fre que le ſecond fits, que navoit alcun droit devant tiel alienation & iſſint il ſemble que tiels remainders en le cas avantdit ſont voides.

THE third cauſe is, when the Condition is ſuch, that if the elder ſon alien, &c. that his eſtate ſhall ceaſe or be void, &c. then after ſuch alienation, &c. may the Donor enter by force of ſuch Condition, as it ſeemeth, and ſo the Donor or his heirs in ſuch caſe ought ſooner to have the land then the ſecond ſon, that had not any right before ſuch alienation; and ſo it ſeemeth that ſuch remainders in the caſe aforeſaid are void.

¶ HEre it is to be obſerved, that part of the condition that prohibiteth the alienation made by Tenant in tail is good in Law, with ſuch diſtinction as hath been before ſaid in the Chapter of Conditions; and the conſequent of the Condition, viz. that the lands ſhould remain to another, &c. is void in Law; and by the opinion of Littleton the Donor may reenter for the Condition broken; for utile per inutile non vitiatur. Which being in caſe of a Condition for the defeating of an Eſtate, is worthy of obſervation.

And it is to be noted, that after the death of the Donor, the Condition deſcendeth to the eldeſt Son, and conſequently his alienation doth extinguiſh the ſame for ever, wherein the weakneſſe of this invention appeareth; and therefore Littleton here ſaith, that it ſeemeth that the Donor may reenter, and ſpeaketh nothing of his heir. A man hath iſſue two ſons, and maketh a Gift in Tail to the eldeſt, the Remainder in fee to the puiſne, upon condition that the eldeſt ſon ſhall not make any Diſcontinuance with warranty to bar him in the Remainder, and if he doth, that then the puiſne ſon and his heirs ſhall reenter, the eldeſt makes a feoffment in Fee with warranty, the Father dieth, the eldeſt ſon dieth without iſſue, the puiſne may enter; but if the Diſcontinuance had been after the death of the Father, the puiſne could not have entred. In this caſe four points are to be obſerved. Firſt, as Littleton here ſaith, the Entry for the breach of the Condition is given to the Father, and not to the puiſne ſon. Secondly, that by the death

41 E. 3. fol.

Vide Sect. 446.

of the Father, the condition deſcends to the elder Son, and is but ſuſpended, and is revived by the death of the eldeſt Son without iſſue, and deſcendeth to the youngeſt Son. Thirdly, that the Feoffment made in the life of the Father cannot give away a Condition that is collateral, as it may do a right. Fourthly, that a warranty cannot bind a title of Entry for a Condition broken, (as hath been ſaid) but if the Diſcontinuance had been made after the death of the Father, it had extinguiſh'd the Condition: which caſe is put to open the reaſon of our Authors opinion.

In the laſt three Sections our Author hath taught us an excellent point of Learning, That when any innovation or new invention ſtarts up, to try it with the rules of the common Law, (as our Author here hath done) for theſe be true Touchſtones to ſever the pure gold from the droſs and ſophiſtications of novelties and new inventions. And by this example you may perceive, That the rule of the old Common Law being ſoundly, (as our Author hath done) applyed to ſuch novelties, it doth utterly cruſh them and bring them to nothing; and commonly a new invention doth offend againſt many rules and reaſons (as here appeareth) of the Common Law, and the ancient Judges and Sages of the Law have ever (as it appeareth * in our Books) ſuppreſſed innovation and novelties in the beginning, as ſoon as they have offered to creep up, leſt the quiet of the Common Law might be diſturbed: and ſo have (a) acts of Parliament done the like, whereof by the authorities quoted in the margent, you may inſtead of many others, upon this occaſion take a little taſte. But our excellent Author in all his three Books hath ſaid nothing, but Ex veterum ſapientium ore, & more.

* 31 E. 3. Gager deliverance 5. 22 Aſſ. 12. 38 E. 3. 1. 2 H. 4. 18, &c.

(a) 1 E. 3. cap. 15. Stat. 3. 18 E. 3. cap. 1. & 6. 4 H. 4. c. 2. 11 H. 6. ca. 13. 12 E. 4. cap. 8, &c.

Sect. 724, 725.

¶ Item, a le Common Ley devant leſtatute de Glouceſter, ſi Tenant p le Curteſie uſt alien en fee obeſque Garrantie, apres ſon deceaſe ceo fuit un bar al heire, ſicome apiert p les parols de meſme leſtatut: mes il eſt remedy p meſme leſtatute que le Garrantie de le Tenant p le Curteſie neſt my bar al hē, ſinon que il y ad aſſets per diſcent per le Tenant per le Curteſie, car devant le dit eſtatute, ceo fuit un Collateral Garrantie al hē, pur ceo q̄ il ne puiſſoit conveyer aſcun title de Diſcent a les tenements per le Tenant p le Curteſie, mes tantſolement per ſa mere, ou auters de ſes Anceſtors, & ceo eſt le cauſe pur que il fuit Collateral Garrantie.

ALſo, at the Common Law before the Statute of *Glouceſter*, if Tenant by the Courteſie had aliened in fee with warranty, after his deceaſe this was a barre to the Heir, as it appeareth by the words of the ſame Statute: but it is remedied by the ſame Statute, That the warranty of the Tenant by the Courteſie ſhall be no barre to the Heir, unleſs that he hath aſſets by diſcent by the Tenant by the Courteſie; for before the ſaid Statute this was a Collateral Warranty to the heir, for that he could not convey any title of Diſcent to the tenements by the Tenant by the Courteſie, but only by his mother, or other of his Anceſtors, and this is the cauſe why it was a Collateral Warranty.

Sect. 725.

¶ Mes ſi home inherit p̄nt Feme, les queux ont fits enter eux, & le pier devie, & le

BUT if a man Inheritor taketh Wife, who have iſſue a ſon between them, and the Father di-

fits

fits entra en la Terre, & endowa ſa mere, & puis le mere alien ceo que el ad en ſa Dower, a un auter en fee ove Garrantie accordant, & puis morust, & le Garrantie deſcendiſt a le fits, ore le fits ſerra barre a demaunder meſme la terre per cauſe de la dit Garrantie, pur ceo que tiel Collateral Garrantie de Tenant en Dower neſt pas remedie per aſcun Eſtatute. Meſme la Ley eſt, lou Tenant a terme de vie fait un Alienation obeſque Garrantie, &c. & morust, & le Garrantie diſcendiſt a celuy que avoit le Reverſion ou le Remainder ils ſerront barres per tiel Garrantie.

eth, and the ſonne entreth into the Land, and endow his mother, and after the mother alienateth that which ſhe hath in Dower to another in fee with Warranty accordant, and after dieth, and the Warranty deſcendeth to the ſon, now the ſon ſhall be barred to demand the ſame Land by cauſe of the ſaid Warranty, becauſe that ſuch collateral Warranty of Tenant in Dower is not remedied by any Statute. The ſame Law is it, where Tenant for life maketh an alienation with Warranty, &c. and dieth, and the Warranty deſcendeth to him which hath the Reverſion or the Remainder, they ſhall be barred by ſuch Warranty.

¶ Of this and the ſubſequent Section ſufficient hath been ſaid before in this Chapter, Sect. 697.

¶ *Neſt pas remedie per aſcun Statute.* But by a Statute made ſince, this caſe is remedied, as you ſee before, Sect. 697.

Sect. 726.

¶ Item, en le dit Caſe, ſi iſſint fuit que quand le Tenant en Dower alienaſt, &c. ſon heir fuit deins age, & aury al Temps q̄ le garrantie diſcendiſt ſur luy, il fuit deins age, en ceſt cas l'heir poit apres enter ſur laliené, nient contreſteant le garranty diſcendiſt, &c. p̄ c' que nul lacheſſe ſerra adjudg' en l'heir deins age q̄ il nentra pas ſur laliené en la vie le tenāt & dower. Mes

Alſo, in the Caſe aforeſaid, if it were ſo that when the Tenant in Dower alienes &c. his heir was within age, and alſo at the time that the warranty deſcended upon him he was within age; In this caſe the Heir may after enter upon the alienee, notwithſtanding the warranty deſcended, &c. becauſe no Lacheſſe ſhal be adjudged in the heir within age, that he did not enter upon the alienee in the life

¶ Here note this diverſity, if the heire be within age at the time of the Deſcent of the warranty, may enter and avoid the Eſtate either within age, or at any time after his full age: And Littleton ſaith well, That the Infant in this caſe may enter upon the Alienee, for if he bring his Action againſt him, he ſhall be barred by this warranty, ſo long as the Eſtate whereunto the Warranty is annexed continue, and be not defeated by Entry of the heir: but if he be within age at the time of the Alienation with warranty, and become of full age before the Deſcent of the warranty, the warranty ſhall barre him for ever. Our Author putteth his Caſes where the Entry of the Infant is lawfull; (a) for where the entry of the Infant is not lawfull

18 E. 4. 13. 35 H. 6. 63. 28 Aſſ. 18. 31 & 3. Gar. 30.

35 H. 6. 63.

(a) 3 H. 7. 35 H. 6. 63. Br. tit. War. 54. 33 H. 8. tit. War. Br. 84. Lib. 1. fol. 67. a. in Archers caſe & 140. Shudleys caſe.

ful when the warranty deſcendeth, the warranty doth binde the Infant, as well as a man of full age; and the reaſon thereof is, becauſe the eſtate whereunto the warranty was annexed, continueth and cannot be avoided but by action, in which action the warranty is a bar: and for the ſame reaſon likewiſe it is of a Feme Covert, if her entry be not lawful, a warranty deſcending on her during the Coverture, doth bind her. (w) And albeit the husband be within age at the deſcent of the warranty; yet if the entry of the wife be taken away, the warranty ſhall binde the wife.

(w)18 E.3.3.

(x)And herein a diverſity is to be obſerved between matters of Record done or ſuffered by an Infant, and matters in fait, for matters in fait he ſhall avoid either within age, or at full age, as hath been ſaid: but matters of Record, as Statutes Merchants, and of the Staple, Recognizances knowledged by him, or a fine levied by him, recovery againſt him by default in real action (ſaving in dower) muſt be avoided by him, viz. Statutes, &c. by Audita querela, and the fine and recovery by writ of Error during his minority, and the like. And the reaſon thereof is, becauſe they are judicial acts, and taken by a Court or a Judge, therefore the nonage of the party, to avoid the ſame, ſhall be tried by inſpection of Judges, and not by the Country. And for that his nonage muſt be tried by inſpection, this cannot be done after his full age: and ſo is the Law clearly holden at this day, though there be ſome difference in our Books. But if the age be inſpected by the Judges, and recorded that he is within age, albeit he come of full age before the reverſal, yet may it be reverſed after his full age:* And ſo was it reſolved by the whole Court of Kings in the caſe of Kekewich.

(x)20 E.1. Audit. quær. 27 F.N.B.104. k. 6 E.3.19.17 E.3.76. 17 Aſſ.53.17.21 E.2.4. 13 E.3.Aud.Quær.26. 18 E.3. Infant.61. 16 H.7.5. 15 E.4.5. 8H.6.30.1 H.7.15.

6 H.8.Saver de default Br.50.3 H.6.10. 1 Mar.Dy.104.

(*)Paſch 13.Ja.R. in the Kings Bench.

If Lands had been given to the husband and wife, and their heirs, and the husband had made a feoffment to another, to whom a Collateral Anceſtor of the wife had releaſed and died, and the husband died, (and this had been before the ſtatute of 32 H.8. this warranty had ſo bound her waivable right, as ſhe could not waive her eſtate, and claim Dower. Otherwiſe it is of an eſtate determined: for if a diſſeiſor make a leaſe to the husband and wife during the life of the husband, and the husband dieth, ſhe may diſagree to this eſtate determined, to ſave her ſelf from damages. And ſo note a diverſity between an eſtate determined, and an eſtate bound by warranty.

si lheire fuit deins age al Temps del alienation, &c. & puis il devient al pleine age en la vie de le Tenant en Dower, & iſſint eſteant de le pleine age, il nentra pas ſur laliene en la vie de le Tenant en Dower: & puis le Tenant en Dower morust, &c. la peradventure l'heire ſerra barr̃ per tiel Garrantie, pur ceo que il ſerra recte ſa follie, que il eſteant de pleine age, ne entre pas en la vie de le Tenant en Dower, &c.

of Tenant in Dower. But if the Heir were within age at the time of the alienation, &c. and after he cometh to full age in the life of tenant in Dower, and ſo being of full age he doth not enter upon the Alienee in the life of Tenant in Dower, and after the Tenant in Dower dieth, &c. there peradventure the Heir ſhall be barred by ſuch Warranty, becauſe it ſhall be accounted his folly, that he being of full age did not enter in the life of Tenant in Dower, &c.

¶ *Nul laches ſerra adjudge en le Heire deins age.* Laches, or Laſches is an old French word for ſlackneſs, or negligence, or not doing. And the Rule (that no negligence ſhall be judged in an Infant) is true, where he is thereby to be barred of his entry in reſpect of a former right, as by a deſcent, or of his former right, (as Littleton doth here put an example) by a warranty where his entry is congeable. But otherwiſe it is of Conditions, charges and penalties going out of, or depending upon the original conveyance; for the Laches or negligence ſhall be adjudged in thoſe caſes aſwel in the infant as in any other.

(y)Pl.Com Stowels caſe, 355. &c.

(y)Vide Pl.Com. Stowels Caſe per totum. And ſee further there, where an infant being tenant for life or years, ſhall be puniſhed for doing or ſuffering of waſte, and where he claimeth by purchaſe, a Ceſſavit ſhall lie againſt him, if he pay not his rent by two years. And ſome have ſaid, If he have the tenancie by deſcent, and he himſelf ceſs, a Ceſſavit doth lie, and he ſhall not have his age, becauſe it is of his own Ceſſer, 31 E.3. Age 54. But other books (as ſome conceive them) be againſt that: Vide 9 Ed. 3. 50. 28 E. 3. 99. 14 E.3. Age 88. 2 E. 2. Age 132.

and

and others, which Books do not prove that the Ceſſavit doth not lye in that caſe, but the contrary, that he ſhall have his age, to the end he may at his full age certainly know what to plead, or what arrerages to tender; for the Land was originally charged with the Seignory and Services.

Sect. 727.

¶ MES ore per leſtatute fait 11 H. 7. cap. 10. il eſt ordeine, ſi aſcun feme diſcontinue, alien, releaſe, ou confirme ode Garrantie aſcun terr̃ ou Tenements que el tient en Dower pur term̃ de vie, ou en taile del done ſa primer baron, ou de ſes Anceſtors, ou ſ̃l doñ daſcun auter ſeiſie al uſe le primer baron, ou de ſes Anceſtors, que touts tiels Garranties, &c. ſerront voides, & q̃ ſ̃l lirroit a ceſtuy q̃ avoit ceux terres ou Tenements apres la mort de meſm̃ la feme denter.

BUT now by the Statute made 11 *H.* 7. *cap.* 10. it is ordained, if any woman diſcontinue, alien, releaſe or confirm with Warranty any Lands or Tenements which ſhe holdeth in Dower for term of life, or in tail of the gift of her firſt husband, or of his Anceſtors, or of the gift of any other ſeiſed to the uſe of the firſt husband, or of his Anceſtors, that all ſuch warranties, &c. ſhall be void, and that it ſhall be lawfull for him which hath theſe Lands or Tenements after the death of the ſame woman to enter.

¶ This is an addition to Littleton, and therefore to be paſſed over. And hereof ſufficient hath been ſaid before, Sect. 697.

Sect. 728.

¶ ITem, il eſt parle en le fiſi de le dit eſtatut de Glouceſt. q̃ parle del alienation ovesque Garrantie fait per le Tenant per l' Curteſie en ceſt form̃. Enſement, en meſme le manner ne ſoit lheire la feme apꝛs la mort le pere & le mere barre daction, ſil demanda lheritage ou l'marriage, ſa mere per Briefe Dentre, que ſon pꝛ̃ aliena en temps ſam̃, dant nul fine eſt levy en la Court le

ALſo, it is ſpoken in the end of the ſaid Statute of *Glouc.* which ſpeaketh of the alienation with Warranty made by the Tenant by the Courteſie in this form. Alſo, in the ſame manner, the heir of the woman after the death of the Father and mother ſhall not be barred of Action, if he demandeth the heritage or the marriage of his Mother by writ of Entry, that his Father aliened in his mothers time,

¶ *Dont nul fine eſt levy en le Court le Roy, &c.* Here are three things worthy of obſervation concerning the conſtruction of Statutes. Firſt that (a) it is to be moſt natural and genuine expoſition of a Statute to conſtrue one part of the Statute by another part of the ſame Statute, for that beſt expreſſeth the meaning of the makers. As here the queſtion upon the general words of the Statute is, whether a fine levied only by a husband ſeiſed in the right of his wife with Warranty ſhall bar the heir without Aſſets. And it is well expounded by the former part of the act, wherein it is enacted, that alienation made by Tenant by the Courteſie with warranty ſhall not bar the heir, unleſſe Aſſets de-

(a) Pl. Com. fo. 75. 7 E. 3. 89.

Vide Bract. li. 4. fo. 392. Fleta lib. 5. cap. 34.

ſcend. And therefore it ſhould be inconvenient to intend the Statute in ſuch manner, as that he that hath nothing but in the right of his wife ſhould by his fine levied with warranty bar the heir without Aſſets. And this expoſition is ex viſceribus actus.

Secondly, the words of an Act or Parliament muſt be taken in a lawfull and rightfull ſenſe, as here the words being (where no Fine is levied in the Kings Court) are to be underſtood, whereof no Fine is lawfully or rightfully levied in the Kings Court. And therefore (b) a Fine levied by the husband alone, is not within the meaning of the Statute, for that Fine ſhould work a wrong to the wife; but a Fine levied by the husband and wife is intended by the Statute, for that Fine is lawfull and worketh no wrong. (c) So the Statute of W. 2. cap 5. ſaith (Ita quod Epiſcopus Eccleſiam conferat (is conſtrued, Ita quod Epiſcopus Eccleſiam legitimè conferat, and the like in a number of other caſes in our Books. And generally the rule is, Quod non præſtat impedimentum quod de jure non ſortitur effectum.

Roy: & iſſint p force de meſme leſtatut, ſi le baron dl feme aliena le heritage, ou mariage ſa feſm en fee ove Garrantie, &c. p ſon fait en pays, ceo eſt clerk Ley, que ceſt Garrantie ſi batera my heire, ſinon que il ad Aſſets per diſcent.

whereof no fine is levied in the Kings Court. And ſo by force of the ſame ſtatute, if the huſband of the wife alien the heritage or mariage of his wife in fee with warranty, &c. by his deed in the Country, it is clear Law, that this warranty ſhall not bar the heir, unleſs he hath Aſſets by diſcent.

(b) Pl. Com. 246. b. Seignior Barkleys caſe, lib. 9. fol. 26. in caſe del Abbot de Strata mercella.
(c) 11 H. 4. 80. 9 E. 4. 12. 21 A 6. 28, 4 E. 4. 31. 12 H. 4. Formedon 15.

Thirdly, that conſtruction muſt be made of a Statute in ſuppreſſion of the miſchief, and in advancement of the remedy, as by this caſe it appeareth. For a Fine levied by the huſband only, is within the letter of the Law; but the miſchief was, the heir was barred of the Inheritance of his mother, by the warranty of his father without Aſſets, and this act intended to apply a remedy, viz. that it ſhould not bar unleſs there were Aſſets; and therefore the miſchief is to be ſuppreſſed, and the remedy advanced. Et qui hæret in litera, hæret in cortice, as often before hath been ſaid.

Sect. 729, 730, & 731.

¶ MES l' dout eſt, ſi l' baron alienaſt lheritage ſa feme, p fine leby en la Court l' Roy obelq Garrantie, &c. ſi ceo barrera lheire ſans alcun diſcent en value. Et quant a ceo jeo voile icy dire certeine reaſons que jeo ay oye dit en ceſt matter. Jeo ay oye mon Maſter S. Richard Newton, iades chiefe Juſtice de Common Banke, dire un ſoits en meſme le Banke, que tiel Garrantie que le Baron fait per fine levie en le Court le Roy barrera lheire, coment que il ad riens per diſcent, pur ceo que leſtatut dit (dont nul fine eſt leby en l'Court l'Roy) & iſſint per ſon

BUT the doubt is, if the husband alien the heritage of his Wife by fine levied in the Kings Court with warranty, &c. if this ſhall barre the heir without any diſcent in value. And as to this I will here tell certain reaſons, which I have heard ſaid in this matter. I have heard my Maſter Sir *Richard Newton*, late Chiefe Juſtice of the Common Pleas, once ſay in the ſame Court, that ſuch Warranty as the husband maketh by fine levied in the Kings Court, ſhall bar the heir, albeit he hath nothing by diſcent, becauſe the Statute ſaith, (whereof no fine is levied in the Kings Court) and ſo by his

opinion

opinion tel Garrantie per fine demurt uncore un collateral Garrantie, come il fuit a le Common Ley, nient remedy per le dit eſtatute, pur ceo que le dit eſtatute except alienations per fine ove Garrantie.

opinion this Warranty by fine remaineth, yet a collateral Warranty as it was at the Common Law not remedied by the ſaid Statute, becauſe the ſaid Statute excepteth alienations by fine with Warranty.

Sect. 730.

¶ ET aſcuns auters ont dit, & uncore dionts le contrarie, & ceo eſt lour proofe, que le come per meſme le Chapiter de dit eſtatute il eſt ordeine, que le Garrantie le Tenant per le curteſie ne ſerra my barre al heire, ſinon que il ad aſſets per diſcent, &c. coment que le Tenant per le curteſie lebie un fine de meſmes les Tenements ovelque Garrantie, &c. auſi forment come il poit faire uncore tel garranty ne barra my lheir, ſinon que il ad aſſets per diſcent, &c. & jeo croy que ceo eſt Ley, & pur ceo ils dionts, que ſerroit inconvenient dentender le ſtatute en tiel form, q̄ un home que nad riens forſque en droit ſa feme purroit per fine lebie per luy de meſmes les Tenements queux il ad forſque en droit ſa feme ove Garrantie, &c. barre lheire de meſmes les tenements ſans aſcun diſcent de fee ſimple, &c. lou le Tenant per le curteſie ceo ne poit faire.

AND ſome others have ſaid, and yet do ſay the contrary, and this is their proof, that as by the ſame Chapter of the ſaid Statute it is ordained, that the Warranty of the Tenant by the curteſie ſhall be no bar to the heir, unleſs that he hath Aſſets by diſcent, &c. although that the tenant by the courteſie levy a fine of the ſame Tenements with warranty, &c. as ſtrongly as he can, yet this Warranty ſhall not bar the heir unleſs that he hath by Aſſets by diſcent, &c. And I believe that this is Law; and therefore they ſay, that it ſhould be inconvenient to intend the Statute in ſuch manner, as a man that hath nothing but in right of his wife might by fine levied by him of the ſame Tenements which he hath but in right of his Wife with Warranty, &c. bar the heir of the ſame Tenements without any diſcent of Fee ſimple, &c. where the Tenant by the courteſie cannot do this.

Sect. 731.

¶ MES il ont dit que le Statute ſerra entend ſolonq̄ tel forme, s. lou le Statute dit, dont nul fine eſt lebie en Court l' Roy, ceo eſt adire, dont nul loial

BUT they have ſaid that the ſtatute ſhall be intended after this manner, s. where the Statute ſaith, whereof no fine is levied in the Kings Court, that is to ſay,

fine

fine eſt droiturelment leby en la Court le Roy, ceo eſt adire, dont nul loial fin eſt droiturelmēt leby en la court le Roy: Et ceo eſt dont nul fine de le baron & ſa feme ſoit lebie en le Court le Roy, car al temps de le ſeſans del dit eſtatute, chelcun eſtate de terres ou Tenements que alcun home ou feme avoit, que diſcenderoit a ſon heire, fuit fée ſimple ſans condition, ou ſur certeine conditions en fait, ou en Ley. Et pur ceo que adonques tiel fine poit droiturelment eſtre lebie per le baron & ſa feme, & les heires le baron garranteront, &c. tiel garrantie barrera lheire, & iſſint ils dient que ceſt lentendement de leſtatute, car ſi le baron & ſa feme fieront un feoffment en fée per fait en pais, ſon heire apres le deceaſe le baron & ſa feme avera Briefe Dentre ſur Cui in vita, &c. nient obſtant le garrantie de le baron, donque ſi nul tiel exception fuit fait en leſtatute de le fine lebie, &c. donque lheire averoit le briefe dentre, &c. nient obſtant le fine lebie per l' baron & ſa feme, pur ceo que les paroles de leſtatute devant lexception de fine lebie, &c. ſont generals, &c. ceſt aſcavoir que lheire la feme apres le mort le pere & la mere ne ſoit barr dauction, ſil demand leheritage, ou le mariage ſa mere per briefe Dentre, que ſon pere aliena en temps ſa mere, & iſſint coment que le baron & la feme alienent per fine uncore ceo eſt voier, que le baron aliena en temps la mere, & iſſint il ſerroit en caſe de leſtatute, ſinon que tiels paroles fueront, &. dont nul fine eſt lebie

whereof no lawfull fine is rightfully levied in the Kings Court: And that is, whereof no fine of the husband and his wife is levied in the Kings Court; for at the time of the making of the ſaid ſtatute, every eſtate of Lands or Tenements that any man or woman had which ſhould deſcend to his heir, was fee ſimple without condition, or upon certain conditions in deed or in Law. And becauſe that then ſuch fine might rightfully be levied by the husband and his wife, and the heirs of the husband ſhould warrant, &c. ſuch warranty ſhall bar the heir, and ſo they ſay that this is the meaning of the Statute; for if the husband and his wife ſhould make a Feoffment in Fee by Deed in the Country, his heir after the deceaſe of the husband and wife ſhall have a Writ of entry *Sur cui in vita*, *&c.* notwithſtanding the warranty of the husband, then if no ſuch exception were made in the Statute of the fine levied, &c. then the heir ſhould have the Writ of entry, &c. notwithſtanding the fine levied by the husband and his wife, becauſe the words of the Statute before the exception of the fine levied, &c, are general, *viz.* that the heir of the wife after the death of the Father and Mother is not barred of action, if he demand the heritage, or the marriage of his Mother by Writ of entry, that his Father aliened in the time of his Mother; and ſo albeit the husband and wife aliened by fine, yet this is true, that the husband aliened in the time of the Mother, and ſo it ſhould be in that caſe of the Statute, unleſs that ſuch

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en la Court le Roy, & iſſint ils diant que ceo eſt a entender, dont nul fine per le baron & ſa feme eſt levie en la Court le Roy, le quel eſt loialment levie en tiel caſe; car ſi les Juſtices ont conuſans, que home que had reins forſque en droit ſa feme voile lever un fine en ſon noſme ſolement, ils ne voylont, ne unque devoyent prender tiel fine deſire levie per le baron ſolement ſans ſa feme, &c. Ideo quære de ceſt matter, &c.

words were, *viz.* whereof no fine is levied in the Kings Court; and ſo they ſay that this is to be underſtood, whereof no fine by the husband and his wife is levied in the Kings Court, the which is lawfully levied in ſuch caſe; for if the Juſtices have knowledge, that a man that hath nothing but in the right of his wife will levie a fine in his name only, they will not, neither ought they to take ſuch fine to be levied by the husband alone without his wife, *&c. Ideo Quære* of this matter, &c.

¶ *Jeo ay oye mon maſter Sir* R. Newton, *&c.* who was a Gentleman of an antient family, in Latine de nova villa, in French de neuſe ville, and a reverend learned Judge, and worthily advanced to be Chief Juſtice of the Court of Common Pleas, whom our Author remembers with great reverence, as by his words you may perceive, calling him his Maſter, & citeth his opinion delivered once in the Court of Common Pleas, which our Author heard and obſerved (whoſe example therein, it is neceſſary for our Student to follow) but the latter opinion (as hath been before obſerved) being Littletons own, is againſt the opinion of the Lord Newton (d) and the Law is holden clearly with our Author at this day, and our Author (as in all other caſes) hath good authority in law to warrant his opinion, Nullius hominis authoritas tantum apud nos valere debet, ut meliora non ſequeremur ſi quis attulerit.

(d) Brast. 331. Fleta lib. 5. cap. 34. 8 R. 2. Gar. 31 18 E. 3. 51. 7 E. 3. 34 Pl Com. 37.

¶ *Car ſi les Juſtices ont conuſance, &c.* Hereby it appeareth (e) that the Judge, if he knoweth it, ought not to take knowledge of a Fine that worketh a wrong to a third perſon.

Sect. 731.
(e) 13 H. 6. 32. 5 E. 3. 56. 2 El. Dier 178. 2. H. 7. 9. 1. Mar. Br. 4 E. 3. 41. 7 El. Dier 246.

¶ *Que ſerroit inconvenient.* Argumentum ab inconvenienti, is very forcible in Law, as often hath been obſerved.

Vide Sect. 37. &c.

Of the reſt of theſe three Sections ſufficient hath been ſaid before.

Sect. 732.

¶ ITem, eſt aſcavoir, que en ceux paroit, ou l'Heire demande l'heritage, ou le marriage ſa mere, ceſt parol (ou) eſt un diſjunctive, & eſt autant a dire, ſi le Heire demande le heritage ſa Mere, ſcil. le Tenements que ſa Mere avoit en fee ſimple per deſcent, ou per purchaſe, ou ſi l'Heire demand le marriage ſa Mere, ceſtaſcavoir, les Tenements

ALſo, it is to be underſtood that in theſe words, where the heir demands the heritage, or the marriage of his mother, this word (or) is a diſjunctive, and is as much to ſay, if the Heir demand the heritage of his mother, *viz.* the tenements that his mother had in fee ſimple by deſcent, or by purchaſe, or if the Heire demand the marriage of his mother, that is

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que fuerent dones a ſa mere en frank-marriage.

to ſay, the tenements that were given to his mother in frank-marriage.

¶ Some do expound heritage of the mother to be the lands which the mother hath by deſcent. And that conſtruction is true, but the Statute by the authority of Littleton extendeth alſo where the mother hath it by purchaſe in fee ſimple; for ſo ſaith Littleton himſelf, that this word (Inheritance) is not only intended where a man hath lands by deſcent, but where a man hath a fee ſimple by purchaſe, becauſe his heirs may inherit him. And albeit it be true, that the Statute extendeth to an Eſtate in Frank-marriage acquired by purchaſe, yet doth it extend alſo to all eſtates in tail, as well by deſcent as by purchaſe; for that Frank-marriage is put but for an example.

Vide Sect.9.

Sect.733.

¶ EGo & hæredes mei warrantizabimus, & in perpetuum defendemus. wherein three things are to be obſerved: Firſt, that Hæredes mei are words of neceſſity, for otherwiſe the heirs are not bound. (a) Secondly, though in the clauſe of the warranty it be not mentioned to whom, &c. yet ſhall it be intended to the Feoffee. (b) Thirdly, That the Feoffor may by expreſs words warrant the Land for the life of the Feoffee, or of the Feoffor, &c. but the recovery in value ſhall be in fee (c) Of this Bracton writeth in this manner, Et ego & hæredes mei warrantizabimus tali & hæredibus ſuis tantum vel tali & hæredibus & aſſignatis, & hæredibus aſſignatorum; vel aſſignatis aſſignatorum, & eorum hæredibus, acquietabimus & defendemus eos totam terram illam cum pertinentiis, contra omnes gentes, &c. per hoc autem quod dicit (ego & hæredes mei) obligat ſe & hæredes ad warrantiam, propinquos & remotos, præſentes & futuros et ſuccedentes in infinitum Per hoc autem quod dicit (warrantizabimus) ſuſcipit in obligationem ad defendendum ſuum tenementum in poſſeſſione rei datæ & aſſignatos ſuos & eorum hæredes & omnes alios, &c. Per hoc autem quod dicit (acquietabimus) obligat ſe & hæredes ſuos ad acquietandum ſi quis

(a) 6 H.2.Vouch.258. 13 E.2.ib.162, 14H.4.25

(b) 38 E.3.14.

(c) Bract.fol.37.238.& Lib.5.380,381. Brit.fol. 106.b.Flet Li.5.cap.15. & lib.6.cap.23.35 H.8. 8.Gar.90.F N.B.134.b.

Brit. ubi ſup. Flet. ubi. ſup.H.6.48. 6 E.2. Gar. 11.162.

¶ ITem, come eſt move en divers Faits, ceux paroix en Latine, Ego & hæredes mei Warrantizabimus, & in perpetuum defendemus, il eſt a veier ql effect ad cel parol, Defendemus, en tiel Faits, & il ſemble que il nad pas leffect de Garranty, ne empyent en luy la cauſe de Garrantie, car ſil iſſint ſerroit, que il pyent effect ou cauſe de Garrantie, donque il ſerroit mitte en aſcuns fines levies en la Court le Roy: Et home ne veit ceo unque, que ceſt parol Defendemus, fuit en aſcun fine, mes tant ſolement ceſt porol Warrantizabimus, perque ſemble que ceſt parol & Verbe Warrantizo, fait la Garrantie, & eſt la cauſe de

ALſo, where it is contained in divers Deeds theſe words in Latine, *Ego & Hæredes mei Warrantizabimus & in perpetuum defendemus*; it is to be ſeen what effect this word (*Defendemus*) hath in ſuch Deeds; and it ſeemeth that it hath not the effect of warranty, nor comprehendeth in it the cauſe of warranty; for if it ſhould be ſo that it took the effect or cauſe of Warranty, then it ſhould be put into ſome fines levied in the Kings Court: and a man never ſaw, that this word (*Defendemus*) was in any Fine, but onely this word (*Warrantizabimus*.) By which it ſeemeth, that this word and Verb (*Warrantizo*) maketh the Warranty, and is the

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Garrantie, & nul auter Verbe en noſtre Ley.

cauſe of Warrantie, and no other word in our Law.

plus petierit ſervitii vel aliud ſervitium quàm in carta donationis continetur. Per hoc autem quod dicit (Defendemus) obligat ſe & hæredes ſuos ad defendendum ſi quis velit ſervitutem ponere rei datæ contra formam ſuæ donationis: (d) Hereby appeareth, That neither Defendere nor Acquietare doth create a warranty, but Warrantizare only. And as Ego & hæredes mei warrantizabimus, &c. in Latine do create a warranty; ſo I and my heirs ſhall warrant, &c. in Engliſh doth create a warranty alſo.

(d) 46 E.3.28. 11 H.4.41. 6 E. 2. Vouch. 202. 2 E. 4. 15. 2.

(e) If a man be bound to A. in Obligation to defend ſuch lands to A. whereof the Obligor had infeoffed him for twelve years, &c. in this caſe if he be ouſted by a ſtranger without being impleaded, the Obligation is forfeit: but if he be bound to warrant the land, &c. the Bond is not forfeited unleſs the Obligee be impleaded, and then the Obligor muſt be ready to warrant, &c.

(e) 2 E.4.15. tit. Dit.71.

¶ *Donques il ſerra mit en aſcuns fines, &c.* Here Littleton draweth an Argument from the form and words of a Fine, and his reaſon is this, That ſeeing that a Fine is the higheſt and ſureſt kind of aſſurance in Law, if Defendemus had the force of a warranty it would have been contained in Fines: and on the other ſide ſeeing this word Warrantizo is contained in Fines to create a warranty, that therefore that word doth imply a warranty, and not the other.

¶ *Et nul auter Verbe en noſtre Ley.* Here it appeareth, That no other Verb in our Law doth make a warranty, but Warrantizo only, which is only appropriated to create a warranty.

46 E. 3. 28. Vide Sect. 1.

But, Qui bene diſtinguit, bene docet, and here of neceſſity you muſt diſtinguiſh. * Firſt, between a warranty annexed to a Freehold or inheritance, (whereof Littleton here ſpeaketh) and a warranty annexed to a ward, which is a Chattel real, for there, Grant, Demiſe, and the like, do make a warranty. And of warranties annexed to Freeholds and Inheritances, ſome be warranties in Deed, and ſome be warranties in Law. A warranty in Deed, or an expreſs warranty, (whereof Littleton here ſpeaketh) is created only by this word Warrantizo; but warranties in Law are created by many other words; they be therefore called warranties in Law, becauſe in judgment of Law they amount to a warranty without this verb Warrantizo. (f) As Dedi is a warranty in Law to the Feoffee and his heirs during the life of the Feoffor, but Conceſſi in a Feoffment or Fine implyeth no warranty. But before the Statute of Quia emptores terrarum, if a man had given lands by this word Dedi, to have and to hold, to him and his heirs, of the Donor and his heirs by certain Services, then not only the Donor but his heirs alſo had been bound to warranty. But if before that Statute a man had given lands by this word Dedi, to a man and his heirs for ever, to hold of the chief Lord, there the Feoffor had not been bound to warranty, but during his life, as at this day he is.

Sect. 697.

* 31 E.3. Vouch.24.12. Rich.2. tit. Cont. de Vouch.35. 29 E.3.48. 30 E.3.6.b. Symken Symons Caſe, 8 E.3.61. 12 E.3. Vouch. 29. Temps E.1 Vouch. 302. 3 H. 6. 17.

(f) Leſtat. de Bigamis ca.6. 2 H.7.7. 6 H.7.2. 48 E.3.2. 31 E. 1. tit. Vouch.290. Fitz.N.B 134. b. 6 E.2. Vouch.258.

And albeit the words of the Statute of Bigamis be, In cartis autem ubi continentur (Dedi & conceſſi, &c.) Yet if Dedi be contained alone, it doth import a warranty, for the Statute doth conclude, Ipſe tamen feoffator in vita ſua ratione proprii doni ſui tenetur warrantizare. So as Dedi is the word that implyeth warranty, and not Conceſſi. Alſo where the words of the Statute be further, ſine clauſula quæ continet Warrantiam, the meaning of the Statute is, That Dedi doth import a warranty in Law, albeit there be an expreſs warranty in the Deed.

For if a man make a Feoffment by Dedi, and in the deed doth warrant the Land againſt I. S. and his heirs, yet Dedi is a general warranty during the life of the Feoffor, and ſo was the Statute expounded in both points, (g) Hil. 14 El. in the Court of Common Pleas, which I my ſelf heard and obſerved. (h) And if a man make a leaſe for life, reſerving a Rent, and add an expreſs warranty, here the expreſs warranty doth not take away the warranty in Law, for he hath election to vouch by force of either of them. And in Nokes Caſe, note a diverſity between a Warranty that is a Covenant real, and a warranty concerning a Chattel. (i) Alſo this word Excambium doth imply a Warranty.

(g) Hil. 14 El. in Com. Banc.

(h) Lib.4. fol.80. in Nokes caſe. 8 E.3.69. 9 E.3.15. 10 E.3.17. 30 Eſſ. Cont. de Gar. 7. 31 E.3. Vouch. 289. 32 E.3. ib. 102. 43 E.3.3. 2 E.3. tit. Cui in vita 17. 3 E.3. Formedon 44.

(i) 4 E.2. Vouch. 245. 32 E.3.3. 14 H. 6. 2. 20 H.6. 14. Lib.4. fol.122. in Buſtards Caſe. 15 E.3. Bar.255. 43 E.3.3. lib.1. fol.96. lib.3. fol.17. Spencers caſe. Lib.8. fol. 75.8. Staffords caſe.

Alſo a partition implyeth a warranty in Law as in the Chapter of Parceners appeareth. And Homage anceſtrel doth draw to it ſelf warranty, as hath been ſaid in the Chapter of Homage anceſtrel.

And it is to be obſerved, That the warranty wrought by this word Dedi is a ſpecial warranty, and extendeth to the heirs of the Feoffee during the life of the Donor only. But upon the exchange and Homage anceſtrel, the warranty extendeth reciprocally to the heirs, and againſt the heirs of both parties: and in none of the Caſes the Aſſignee ſhall vouch by force of

of any of theſe warranties; but in the caſe of the exchange and Dedi the Aſſignee ſhall rebut, but not in the caſe of Homage anceſtrel.

(k) 28 Aſſ. 33. 14 H. 4. 5. 28 E. 3. 18. 4 E. 2. Avow. 201, & 202. 19 E. 3. Avower 201, 202. 11 E. 3. Avower 100. 30 H. 6. 7. 33 H. 8. Dyer 51. 10 H. 7. 11. b. F. N. B. 163. a.

(k) And ſo no man ſhall have a writ of Contra formam collationis, but only the Feoffee and his heirs which be privy to the Deed, but an Aſſignee may rebut by force of the Deed.

(l) 6 E. 2. Cont. de Vouch. 105. 5 E. 3. 67. 4 E. 2. Ib. 102. 6 E. 3. 11. 50. 7 E. 3. 6. 18 E. 3. 8. 22 E. 3. 3. 3 H. 7. 13. 6 H. 7. 2. 14 E. 3. Gar. 32. F. N. B. 134. G. 5 E. 3. 87. 20 E. 3. tit. Counter plea de Gar. 7.

(l) If a man make a gift in Tail or a leaſe for life of Land, by Deed or without Deed, reſerving a rent, or of a rent ſervice by Deed, this is a warranty in Law, and the Donee or Leſſee being impleaded ſhall vouch and recover in value. And this warranty in Law extendeth not only againſt the Donor or Leſſor and his heirs, but alſo againſt his Aſſignes of the reverſion; and ſo likewiſe the Aſſignee of the Leſſee for life ſhall take the benefit of this warranty in Law.

(m) 4 E. 3. 36. 33 E. 3. tit. Count de Vouch. 122. 43 Aſſ. 32. 50 E. 3. 7. F. N. B. 149. m.

(m) When Dower is aſſigned there is a warranty in Law included, that the Tenant in Dower being impleaded, ſhall vouch and recover in value a third part of the two parts whereof ſhe is dowable.

And it is to be underſtood, that a warranty in Law and Aſſets is in ſome caſes a good bar.

(n) 14 H. 6. 2. 15 E. 3. Bar. 255.

(n) In a Formedon in the Deſcender the Tenant may plead, that the Anceſtor of the Demandant exchanged the Land with the Tenant for other lands taken in exchange, which deſcendeth to the Demandant whereunto he hath entred and agreed; or if he had not entred and agreed unto the Lands taken in exchange, then the Tenant may plead the warranty in Law, and other Aſſets deſcended.

(o) 38 H. 3. 22, 23, 24. 13 E. 3. Gar. 35.

(o) If Tenant in tail of Lands make a gift in tail, or a Leaſe for life, rendring a rent, and dieth, and the Iſſue bringeth a Formedon in the Deſcender, the reverſion and rent ſhall not bar the Demandant, becauſe by his Formedon he is to defeat the reverſion and rent, Et non poteſt adduci exceptio ejuſdem rei, cujus petitur diſſolutio.

(p) 16 E. 3. Age 45. 18 E. 3. 8. 31 E. 3. Gar. 29.

(p) But if other Aſſets in Fee ſimple do deſcend, then this warranty in Law and Aſſets is a good bar in the Formedon.

Here four things are to be obſerved: Firſt, that no warranty in Law doth bar any Collateral title, but is in nature of a lineal warranty: wherein the equity of the Law is to be obſerved.

Vide lib. 4. fol. 121. Buſtards Caſe.

Secondly, that an expreſs warranty ſhall never bind the heirs of him that maketh the warranty, unleſs (as hath been ſaid) they be named; as for example, Littleton here ſaith (Ego & hæredes mei) but in caſe of warranties in Law, in many caſes the heirs ſhall be bound to warranty, albeit they be not named.

Thirdly, that in ſome caſes warranties in Law do extend to execution in value of ſpeciall Lands, and not generally of lands deſcended in Fee ſimple, as you may ſee at large in my Reports.

(q) 45 E. 3. 20. b.

(q) Fourthly, that warranties in Law may be in ſome caſes created without Deed, as upon gifts in tail, Leaſes for life, Exchanges and the like.

And ſeeing ſomewhat hath been ſaid out of Bracton and other ancient Authors concerning Aſſignees, it is neceſſary to ſhew who ſhall take advantage of a warranty, as aſſignee by way of Voucher, to have recompence in value.

(r) 14 E. 3. Gar. 33. 13 E. 1. Gar. 83. lib. 5. fol. 17. b. in Spencers caſe, 38 E. 3. 21.

(r) If a man infeoffe A. and B. to have and to hold to them and their heirs, with a clauſe of warranty, Prædictis A. & B. & eorum hæredibus & aſſignatis: in this caſe if A. dieth, and B. ſurviveth and dieth, and the heir of B. infeoffeth C. he ſhall vouch as Aſſignee; and yet he is but the Aſſignee of the heir of one of them, for in judgment of Law the Aſſignee of the heir is the Aſſignee of the Anceſtor; and ſo the Aſſignee of the Aſſignee ſhall vouch in infinitum, within theſe words, (His Aſſignes.)

(f) 12 E. 2. Vouch. 263. 19 E. 2. Gar. 85. 13 E. 4. ib. 93. lib. 5. fol. 17. Spencers caſe, 7 E. 3. 34. 10 E. 3. 9. 14 E. 3. Gar. 33. Bract. ubi ſup. 9 E. 2. Gar. de Chart 30. 36 E. 3. Gar. 1. 4 H. 8. Dyer 1. F. N. B. 135.

(f) If a man infeoffeth A. To have and to hold to him, his heirs and Aſſignes, A. infeoffeth B. and his heirs, B. dieth, the heir of B. ſhall vouch as Aſſignee to A. So as heirs of Aſſignees, and Aſſignees of Aſſigns, and Aſſigns of Heirs are within this word (Aſſignes) which ſeemed to be a queſtion in Bractons time. And the Aſſignee ſhall not only vouch, but alſo have a Warrantia Cartæ.

(t) 43 E. 3. 23. 26 E. 3. 68. 40 E. 3. 14. 24 E. 3. 3. 1 H. 4. 94. 50 E. 3. 17. 5 H. 3. Age 19. Pl. Com. 418.

If a man doth warrant Land to another without this word (Heirs,) his Heirs ſhall not vouch: and regularly if he warrant Land to a man and his heirs, without naming Aſſignes, his Aſſignee ſhall not vouch. (t) But if the Father be enfeoffed with warranty to him and his heirs, the Father infeoffeth his eldeſt ſon with Warranty and dyeth, the Law giveth to the Son advantage of the warranty made to his Father, becauſe by act in Law the warranty between the Father and the Son is extinct.

But note, there is a diverſity between a warranty that is a Covenant real, which bindeth the party to yield Lands or Tenements in recompence, and Covenant annexed to the Land, which is to yield but damages, for that a Covenant is in many caſes extended further then the warranty: As for example:

(u) 42 E. 3. b. per Finchdon.

(u) It hath been adjudged, that where two Coparceners made partition of Land, and the one made a Covenant with the other, to acquit her and her heirs of a ſuit that iſſued

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out of the Land, the Covenantee aliened, in that caſe the aſſignee ſhall have an action of covenant, and yet he was a ſtranger to the Covenant, becauſe the acquital did run with the Land.

(x) A. ſeiſed of the Mannor of D. whereof a Chappel was parcel; a Prior with the aſſent of his convenanteth by Deed indented with A. and his heirs to celebrate Divine Service in his ſaid Chappel weekly, for the Lord of the ſaid Mannor, and his ſervants, &c. In this caſe the aſſignees ſhall have an action of Covenant, albeit they were not named; for that the remedy by Covenant doth run with the Land, to give damages to the party grieved, and was in a manner appurtenant to the Mannor. (y) But if the Covenant had been with a ſtranger to celebrate Divine ſervice in the Chappel of A. and his heirs, there the aſſignee ſhall not have an action of Covenant, for the Covenant cannot be annexed to the Mannor, becauſe the Covenantee was not ſeiſed of the Mannor. See in Spencers Caſe before remembred, divers other diverſities, between warranties, and Covenants which yield but damages.

(x) 42 E.3.3. 3. Laur. Pickeſhams caſe. 2 H.4.6. 6 H.4 1. & 2 Ralf Brabſons caſe, lib.4. fol.17. 18 Spencers caſe.

(y) 2 H.4.6. Hen. Homes caſe 6 H.4 1. Lib.5.fol.17,18. Spencers caſe.

And here is to be obſerved, that an aſſignee of part of the Land ſhall vouch as aſſignee; (*) as if a man make a feoffment in fee of two acres to one, with warranty to him, his heirs and aſſigns, if he make a feoffment of one acre, the Feoffee ſhall vouch as aſſignee, for there is a diverſity between the whole eſtate in part, and part of the eſtate in the whole, or of any part. As if a man hath a warranty to him, his heirs, and aſſigns, and he make a Leaſe for life, or a gift in tail, the Leſſee or Donee ſhall not vouch as aſſignee, becauſe he hath not the eſtate in fee ſimple, whereunto the warranty was annexed; but the Leſſee for life may pray in aid, or the Leſſee or Donee may vouch the Leſſor or Donor, and by this means he ſhall take advantage of the Warranty. But if a leaſe for life, or gift in tail be made, the Remainder over in fee, ſuch a Leſſee or Donee ſhall vouch as aſſignee, becauſe the whole eſtate is out of the Leſſor, and the particular eſtate, and the remainder do in judgment of Law to this purpoſe make but one eſtate.

(*) 18 E.3.51. 10 E.3.58. 5 E.3.40. 12 E.3. Counterplea de Vouch.42. 14 E.3. Voucher 108.5 E.3. ibid 178. 13 E.3. ibid.119. 40 E.3.22.41. E.3. Vouch.69. & 100. 32 E.3. ibid.96. And this diverſity was agreed until 14 E.1. Communi Banco, which I heard and obſerved.

(a) If a man infeoffe three with warranty to them and their heirs, and one of them releaſe to the other two, they ſhall vouch; but if he had releaſed to one of the other, the warranty had been extinct for that part, for he is an aſſignee.

(a) 40 E.3.14. 40 Aſſ.5. 33 H.6.4. 37 H.8. Alienation ſans licence 31. 8 H.4.8.

(b) If a man doth warrant Land to two men and their heirs, and the one make a feoffment in fee, yet the other ſhall vouch for his moiety. If a man at this day be enfeoffed with warranty to him, his heirs, and aſſigns, and he make a gift in tail, the remainder in fee, the Donee make a feoffment in fee, that feoffee ſhall not vouch as aſſignee, becauſe no man ſhall vouch as aſſignee, but he that cometh in in priviti of eſtate, but he muſt vouch his Feoffor, and he to vouch as aſſignee, but ſuch an aſſignee may rebut. If the Warranty be made to a man and his heirs, without this word (aſſigns) yet the aſſignee, or any Tenant of the Land may rebut. And albeit no man ſhall vouch or have a Warrantia cartæ, either as party, heir, or aſſignee, but in priviti of eſtate, yet any that is in of another eſtate, or it by diſſeiſin, abatement, intruſion, uſurpation or otherwiſe, ſhall rebut by force of the Warranty, as a thing annexed to the Land, which ſometime was doubted (c) in our Books. But herein is a diverſity to be obſerved, when in the caſes aforeſaid, he that rebutteth claimeth under the warranty, and when he that would rebut claimeth above the warranty, for there he ſhall not rebut. And therefore if any Lands be given to two Brethren in fee ſimple, with a warranty to the eldeſt and his heirs, the eldeſt dieth without iſſue, the ſurvivor, albeit he be heir to him, yet ſhall he neither vouch nor rebut, nor have a Warrantia cartæ, becauſe his title to the Land is by relation above the fall of the Warranty, and he cometh not under the eſtate of him to whom the Warranty is made, as the Diſſeiſor, &c. doth.

(b) 11 R.2. Derin.w46. 7 E.3.35. 46 E.3.4.

(c) 38 E.3.21. 26 E.3.56. Lib.10. fol.96. b. Seymors caſe 7 E.3.34,35. 8 E.3. 10. 46 E.3.4. 10 E.3. 42. 45 E.3.18. 10 Aſſ.9. 35 Aſſ.9. 22 Aſſ.39.88. 31 Aſſ.13.

(d) If a man make a gift in tail at this day, and warrant the land to him, his heirs and aſſigns, and after the Donee make a feoffment and dieth without iſſue, the warranty is expired as to any voucher or Rebutter; for that the eſtate in tail whereunto it was knit is ſpent: otherwiſe it is, if the gift and feoffment had been made before the Statute of Donis condicionalibus; for then both the Donee and Feoffee had a fee ſimple, and ſo are our Books to be intended in this and the like caſes.

(d) Lib.2. fol.62,63. Lincoln Colledge caſe.

(e) If A. be ſeiſed of Lands in fee, and B. releaſeth unto him, or confirmeth his eſtate in fee with warranty to him, his heirs and aſſignes, all men agree this warranty to be good; but ſome have holden, that no warranty can be raiſed upon a bare releaſe or confirmation without paſſing ſome eſtate or tranſmutation of poſſeſſion. (f) But the Law, as it appeareth by Littleton himſelf, is to the contrary, and that both the party, and (as ſome do hold) his aſſignee ſhall vouch; but he that is vouched in that caſe muſt be preſent in Court, and ready to enter into the warranty and to anſwer, and the Tenant muſt ſhew forth the Deed of Releaſe or confirmation with warranty, to the intent the Demandant may have an anſwer thereunto; and either deny the deed or avoid it; for that at the time of the confirmation made, he to whom it was made, had nothing in the land, &c. for otherwiſe the demandant may counterplead the Voucher by the Statute of W. 1. viz that neither Voucher nor any of his Anceſtors had any eſtate

(e) 14 E.3. Gar.108. 12 H.7.1.

(f) 11 H.4.22. 10 E.3.52. 21 E.3.27. Vide Sect.700. 738. & 745.

W.1. cap.40.

Vide 20 E.1. Statute de vocat. ad warrant.
(g) 22 H.6.15. 19 H.6.73. 20 H.6.73. 2 H.4.13. 41 E.3. Gar.15. 43 E.3. 17.43 Aſſ.42. 12 Aſſ.17. 12 E.3. taile 3. 22 E.4.16. b. 44 E.3.10. 44 Aſſ. Baſſingborns Aſſ.1.10. fol.97. Seymors caſe.
(h) Lib.3. fol.36. Lincoln Colledge caſe.

(i) 20 E.3.70. 7 E.2. Joinder in action 12. 11 E.48.

(k) 14 H.4.3.

ſeiſin whereof he might make a feoffment. And this is grounded upon the ſaid ſtatute of W. 1. the words whereof be, Sil neit ſon garrantie en preſent, que lun voille garrenter de long gree, & maintenant enter en reſpons, Otherwiſe tenant muſt be driven to his Warrantia cartæ:

(g) But a warranty of it ſelf cannot inlarge an eſtate; as if the Leſſor by deed releaſe to his Leſſee for life, and warrant the land to the Leſſee and his heirs, yet doth not this enlarge his eſtate.

(h) If a man make a feoffment in fee with warranty to him, his Heirs and Aſſigns, by Deed (as it muſt be) and the Feoffee enfeoffeth another by parol, the ſecond Feoffee ſhall vouch, or have a Warrantia cartæ, (as hath been ſaid) as aſſignee, albeit he hath no Deed of the aſſignment, becauſe the Deed comprehending the warranty, doth extend to the aſſignees of the Land, and he is a ſufficient aſſignee, albeit he hath no Deed.

(i) If a man enfeoffe two, their heirs and aſſigns, and one of them make a feoffment in fee, that feoffee ſhall not vouch as aſſignee.

If a man make a feoffment in fee to A. his heirs and aſſigns, A. enfeoffeth B. in fee, who re-enfeoffeth A. He or his Aſſigns ſhall never vouch, for A. cannot be his own Aſſignee. But if B. had feoffed the heir of A. he may vouch as aſſignee; for the heir of A. may be aſſignee to A. inaſmuch as he claimeth not as heir.

(k) If a man make a feoffment by Deed of Lands to A. to have and to hold to him and his heirs, and bind him and his heirs to warrant the Land, In forma prædicta; this warranty ſhall extend to the Feoffee and his heirs, except the words had been, to him and his heirs.

If a man letteth lands for life, the Remainder in tail, the Remainder eadem forma, this is a good eſtate tail, quia idem ſemper refertur proximo præcedenti.

Sect. 374.

¶ Item, ſi tenant en taile ſoit ſeiſie des terres deviſables per teſtament ſolonque le cuſtome, &c. & le tenant en taile alien meſmes les Tenements a ſon frere en fee, & ad iſſue, & devie, & puis ſon frere deviſa per ſon Teſtament meſmes les tenements a un auter en fee, & oblige luy & ſes heires a garrantie, &c. & mourſt ſans iſſue, il ſemble que ceſt garrantie ne barrera my liſſue en taile; ſil voit ſues ſon briefe de Formedon, pur ceo que ceſt garrantie ne diſcende my al iſſue en le taile, entant que le Uncle del iſſue ne fuit my oblige a le garrantie en ſa vie; ne que il ne puiſſoit garranter les tenements en ſa vie, entant que le deviſe ne puiſſoit prender aſcun execution ou effect, forſque apres ſon deceaſe. Et entant que le Uncle en ſon vie ne fuit tenus de garranter, tiel grantie ne poit diſcen-

ALſo, if tenant in tail be ſeiſed of Lands deviſable by teſtament after the cuſtome, &c. and the Tenant in Tail alieneth the ſame Tenements to his brother in fee, and hath iſſue and dieth, and after his brother deviſeth by his Teſtament the ſame Tenements to another in fee, and bindeth him and his heirs to Warranty, &c. and dieth without iſſue; it ſeemeth that this warranty ſhall not bar the iſſue in the Tail, if he will ſue his Writ of *Formedon*, becauſe that this Warranty ſhall not deſcend to the iſſue in Tail, in ſo much as the Uncle of the Iſſue was not bound to the ſame Warranty in his life-time: neither could he warrant the Tenements in his life, inſomuch as the deviſe could not take an execution or effect until after his deceaſe. And inſomuch as the Uncle in his life was not

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ſoer que ſurveſquiſt poit bien enter & ouſter le Diſſeiſor de touts les tenements, pur ceo que tiel garrantie neſt pas Diſcontinuance, ne collateral garrantie a la ſoer que ſurveſquiſt, pur ceo que ils ſont de demy ſanke, & iun ne poit eſtre heire a lauter, ſolonque le cours del Common Ley. Mes auterment eſt iou y ſont files del tenant en taile per un meſme venter.

ſiſter which ſurviveth may well enter, and ouſt the diſſeiſor of all the Tenements, becauſe ſuch Warranty is no Diſcontinuance nor collateral Warranty to the ſiſter that ſurviveth, for that they are of half blood, and the one cannot be heir to the other according to the courſe of the Common Law. But otherwiſe it is where there be daughters of Tenant in tail by one venter.

¶ The reaſon of this, is, in reſpect of the half blood, whereof ſufficient hath been ſaid in the firſt Book, in the Chapter of *Fee-ſimple*.

Two Brothers be by Demy venter; the eldeſt releaſeth with warranty to the Diſſeiſor of the Uncle, and dieth without iſſue; the Uncle dieth, the warranty is removed, and the younger Brother may enter into the Land.

Sect.738.

¶ ITem, ſi Tenant en Taile leſſa les tenements a un home pur terme de vie, le remainder a un auter en Fee, et un Collateral Auncеſter confirma le ſtate del Tenant a terme de vie, & oblige luy & ſes Heires a Garrantie pur terme de vie del Tenant a terme de vie et mouſt, & le Tenant en Taile ad iſſue, & debie, ore iſſue, eſt barre a demander les Tenements per Briefe de Formedon, durant le vie le Tenant a terme de vie per cauſe del Collateral Garrantie deſcendu ſur le iſſue en le Taile. Mes apres le deceaſe de le

ALSO, if Tenant in Tail letteth the Lands to a man for term of life, the Remainder to another in Fee, and a Collateral Anceſtor confirmeth the ſtate of the Tenant for life, and bindeth him and his Heirs to Warranty for term of the life of the Tenant for life, and dieth, and the Tenant in Tail hath Iſſue and dies; now the iſſue is barred to demand the Tenements by Writ of *Formedon* during the life of Tenant for life, becauſe of the Collateral warranty deſcended upon the iſſue in Tail. But after the deceaſe of the Tenant for life,

¶ Here it appeareth, that a warranty may be raiſed by a Confirmation which transferreth neither Eſtate nor right; wherof ſufficient hath been ſaid before. Vide Sect.733. & 704.

¶ *A Garrantie pur terme de vie, &c.* This (p) proveth that a warranty may be limitted, and that a man may warrant lands aſwel for term of life, or in tail, as in fee. (p) 38 E.3.14. 16 E.3. Vouch.87.

If Tenant in fee-ſimple that hath a warranty for life either by an expreſs warranty, or by Dedi, be impleaded and vouch, he ſhall recover a Fee-ſimple in value, albeit his warranty were but for term of life, becauſe the warranty extended in that caſe to the whole eſtate of the Feoffee in Fee-ſimple; but in the caſe that Littleton here putteth, the Tenant for life ſhall recover in value but an eſtate for life, becauſe the warranty doth extend to that eſtate only.

¶ *Un Briefe de Formedon*, &c. Here is implyed that a Collateral

der de luy al iſſue en le Taile, &c. car nul choſe poit deſcender del auncеſter a ſon Heire, ſinon que meſme ceo fuit en launceſter.

held to warranty, ſuch warranty may not deſcend from him to the iſſue in tail, &c. for nothing can deſcend from the Anceſtor to his heir, unleſs the ſame were in the Anceſtor.

¶ HEre our Author declareth one of the Maxims of the Common-Law, that the heir ſhall never be bound to any expreſs Warranty, but where the Anceſtor was bound by the ſame Warranty; for if the Anceſtor were not bound, it cannot deſcend upon the heir, which is the reaſon here yielded by Littleton. (l) If a man make a feoffment in fee, and bind his heirs to warranty, this is void by the warrant of this Maxime, as to the Heir, becauſe the Anceſtor himſelf was not bound. Alſo, if a man bind his heirs to pay a ſum of money, this is void. And of the other ſide, if a man bind himſelf to warranty, and bind not his heirs, they be not bound, for he muſt ſay, as it appeareth before, Ego & hæredes mei warrantizabimus, &c. (m) and Fleta ſaith, Nota quod hæres non tenetur in Anglia ad debita anteceſſoris reddenda, niſi per anteceſſorem ad hoc fuerit obligatus, preterquam debita regis tantum: A fortiori in caſe of warranty, which is in the realty.

(l) 31 E. 1. Grant. 8.

Bracton lib. 2. fo. 37. 738. Britton fol. 106. b.
(m) Fleta lib. 2. c. 55. Britton fol. 65. b. 11 H. 6. 48.

But a warranty in Law may bind the heir, although it never bound the Anceſtor, and may be created by a laſt will and Teſtament: (n) As if a man deviſe Lands to a man for life or in tail, reſerving a Rent, the Deviſee for life or in taile ſhall take advantage of this warranty in law, although they be not named. Alſo an expreſs warranty cannot be created without Deed, and a Will in writing is no Deed, and therefore an expreſs warranty cannot be created by will.

(n) 18 E. 3. 8.

Sect. 735.

AVry un Garrantie ne poit aler ſolonque la nature des Tenements per le cuſtome, &c. mes tantſolement ſolonque le forme del Common Ley. Car ſi le tenant en tail ſoit ſeiſie des Tenements en Burgh Engliſh, lou le cuſtome eſt, que touts les Tenements deins meſme le Borough devoyent deſcender a le fits puiſne, & il diſcontinua le taile ove Garrantie, &c. & ad iſſue deux fits, & morust ſeiſie des auters terres ou Tenements en meſme le Burgh en fee ſimple a le value, ou pluis de les Tenements tailes, &c. uncore le puiſne fits avera un Formedon de les terres tailes, & ne ſerra my bar per l'Garrantie ſon pere, coment que Aſſets a luy diſcendiſt en fee ſimple de meſme le pere, ſolonque

ALſo, a Warranty cannot go according to the nature of the Tenements by the cuſtom, &c. but only according to the form of the Common Law. For if the Tenant in Taile be ſeiſed of Tenements in Borough Engliſh, where the cuſtom is, that all the Tenements within the ſame Borough ought to deſcend to the youngeſt ſon, and he diſcontinueth the Taile with Warranty, &c. and hath iſſue two ſonnes, and dyeth ſeiſed of other Lands or Tenements in the ſame Borough in fee ſimple to the value, or more, of the Lands entailed, &c. yet the youngeſt ſonne ſhall have a *Formedon* of the Lands tailed, and ſhall not be barred by the warranty of his father, albeit Aſſets deſcended to him in fee ſimple from his ſaid Father

le cuſtome, &c. pur ceo que le Garrantie diſcendiſt a ſon eigne frere que eſt in pleine vie, & nemy ſur le puiſne. Et en meſme le maner eſt de collateral Garrantie fait de tiels Tenements, lou le Garrantie diſcendiſt ſur leigne fits, &c. ceo ne barrera my le puiſne fits, &c.

according to the cuſtome, &c. becauſe the warranty deſcendeth upon his elder brother who is in full life, and not upon the youngeſt. And in the ſame manner it is of collateral warranty made of ſuch Tenements, where the warranty deſcendeth upon the eldeſt ſon, &c. this ſhall not bar the younger ſon, &c.

Sect. 736.

¶ EN meſme le maner eſt de Tenements en le County de Kent, queux ſont appelles Gavelkind, les queux Tenements ſont partibles enter les freres, &c. ſolonque la cuſtome, ſi aſcun tiel Garrantie ſoit fait per ſon aunceſtor, tiel Garrantie deſcendera tant ſolement a l'heir que eſt heire al common ley, ceſt aſcavoir al eigne frere, ſolonque la conuſans del common ley, & nemy a touts les heires queux ſont heires de tiels Tenements ſolonque le cuſtome.

¶ IN the ſame manner it is of Lands in the County of *Kent*, that are called Gavelkind, which Lands are devideable betweene the Brothers, &c. according to the cuſtome, if any ſuch warranty be made by his Anceſtor, ſuch warranty ſhall deſcend onely to the heir, which is heir at the Common Law, that is to ſay, to the elder brother, according to the Conuſance of the Common Law, and not to all the heirs that are heirs of ſuch Tenements according to the cuſtome.

Vide ſect. 603. 718. & 737.
(n) 11 E. 3. Dec. 7. 21 H. 7. 12.
(o) 17 E. 3. Joint 41. 16 H. 7. 13. 19 E. 3. 4. 22 H. 7. 3 22 E. 3. 1. 27 E. 3. 1. 30 E. 3. 40. 29 H. 6. 55. lib. 1. fol. 14. Matthew Herberts caſe.

¶ HEreupon a diverſity is to be obſerved betwéen the Lien real, and the Lien perſonal. For the Lien real, as the warranty, doth ever deſcend to the heir at the Common Law; (n) but in Lien perſonal doth bind the ſpecial heirs, as all the heirs in Gavelkind, and the heir on the part of the mother, as hath been ſaid.

(o) If two men make a feoffment in fee with a warrantie, and the one die, the feoffee cannot vouch the ſurvivor only, but the heir of him that is dead alſo; but otherwiſe if two joyntly bind themſelves in an Obligation, & the one die, the ſurvivor only ſhall be charged.

Sect. 737.

¶ ITem, ſi tenant en le taile ad iſſue deux files per divers venters, & mozuſt, & les files entront, et un eſtrange eux diſſeiſiſt de meſmes les Tenements, et lun de eux releſſa per ſon fait a le Diſſeiſor tout ſon droit, & oblige luy et ſes heires a Garrantie, et mozuſt ſans iſſue: en ceſt caſe la

ALſo if Tenant in Taile hath iſſue two daughters by divers venters and dieth, and the daughters enter, and a ſtranger diſſeiſeth them of the ſame Tenements, and one of them releaſeth by her deed to the Diſſeiſor all her right, and binde her and her heires to warranty, and die without iſſue: In this caſe the

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the warranty made, for if the heir of the wife dying an Aſſiſe of Mordancester; this Action is grounded after the warranty, whereunto as hath been ſaid, the warranty ſhall not extend.

So it is if the Grantee of the Rent grant it to the Tenant of the Land upon condition, which maketh a feoffment of the Land with warranty; this warranty cannot extend to the Rent, albeit the feoffment was made of the Land diſcharged of the Rent; for if the condition be broken, and the Grantor be intituled to an action, this muſt of neceſſity be grounded after the warranty made.

But in the caſe aforeſaid, when the woman Grantee of the rent married with the tenant, and the tenant maketh a feoffment in fee with warranty, and dieth, in a Cui in vita brought by the wife (as by Law ſhe may) (b) the Feoffee ſhall vouch as of lands diſcharged at the time of the warranty made, for that her title is Paramount; ſo if tenant in tail of a Rent-charge purchaſe the land, and make a feoffment with warranty, if the iſſue bring a Formedon of the Rent, the Tenant ſhall vouch Cauſa qua ſupra. (b) 7 H. 4. 17.

(*) But ſome do hold, that a man ſhall not vouch, &c. as of Land diſcharged of a Rent-ſervice. (*) 10 E. 4. 9. b. 18 E. 3. 55. 44 E. 3. 19.

(c) Alſo no warranty doth extend unto meer and naked Cities, as by force of a condition with clauſe of Re-entry, Exchange, Mortmain, conſent to the raviſher, and the like, becauſe that for theſe no action doth lie; and if no action can be brought, there can be neither voucher, writ of Warrantia cartæ, nor Rebutter, and they continue in ſuch plight and eſſence as they were by their original creation, and by no act can be diſplaced or deveſted out of their original eſſence, and therefore cannot be bound by any warranty. (c) Lib. 10. fol. 97. E. Seymours caſe. 22 Aſſ. 32. 31 Aſſ. p. 13. 41 Aſſ. p. 6. 33 E. 1. Gar. 74.

(d) And albeit a woman may have a writ of Dower to recover her Dower, yet becauſe her title of dower cannot be deveſted out of the original eſſence, a collateral Warranty of the Anceſtor of the woman ſhall not bar her. So it is of a Feoffment Cauſa matrimonii prælocuti. (d) 34 E. 3. tit. Avoir pur 21 E. 4. 22.

(e) A warranty doth not extend to any leaſe, though it be for many thouſand years, or to eſtates of Tenant by Statute Staple, or Merchant, or Elegit, or any other Chattel, but only to freehold or inheritances, as it appeareth in all Littletons caſes, which be putteth in this Chapter. And this is the reaſon, that in actions which leſſee for years may have, a warranty cannot be pleaded in Bar, as in an action of treſpaſs, or upon the Statute of 5 R. 2. and the like. But in thoſe actions where the freehold or Inheritance do come in queſtion, there the warranty may be pleaded. But in ſuch actions which none but a Tenant of the Freehold can have, as upon the Statute of 8 H. 6. Aſſiſe. or the like, there a warranty may be pleaded in Bar. (e) 21 E. 4. 18. 22. 2 H. 7. 12. 22. 21 H. 7. 15. 16. 20 H. 7. 2. b. 14 H. 7. 22. 43 E. 3. 25. per Finch in quar. Imp. 15 H. 7. 9. lib. 10. fol. 97.

¶ *Quand Garrantie eſt fait a un home ſur eſtate, que adonques il avoit, ſi leſtate ſoit defeat, le Garrantie eſt defeat.* Here it appeareth, that although a collateral warranty be deſcended, (f) yet if the ſtate whereunto the warranty was annexed be defeated albeit it be by a meer ſtranger, (as in this caſe that Littleton here puts by the Diſcontinuee) the warranty is defeated; and although the Diſcontinuance remain, and no Remitter wrought to the heir, yet the warranty is defeated, and bar removed; ſo as the iſſue in taile may have his Formedon, and recover the Land. Sublato principali tollitur adjunctum. (f) 3 H. 7. 9. b. 16 E. 3. tit. Continual claim 28. 9 H. 6. 5. Fl. Com. 251.

Sect. 742.

¶ EN meſme le manner eſt, ſi le diſcontinuee fait feoffement en fee, reſervant a luy un certaine Rent, & pur default de payment un re-entry, &c. et un collateral Garrantie de Anceſter eſt fait a celuy feoffee que ad Eſtate ſur condition, &c. et moruſt ſans iſſue, coment que cel Garrantie diſcendet ſur iſſue en taile, uncore ſi apres le Rent ſoit arere, & le

IN the ſame manner it is, if the diſcontinuee make a feoffment in fee, reſerving to him a certain rent, and for default of payment a re-entry, &c. and a collateral warranty of the Anceſtor is made to the Feoffee that hath the Eſtate upon condition, &c. and dieth without iſſue, albeit that this warranty ſhall deſcend upon the iſſue in taile, yet if after the rent be behind, and the

discontinuee entra en la terre, avenque avera issue en Taile son recovery per briefe de Formedon, pur ceo q̄ le collateral garranty est defeat. Et issint si ascun tiel collateral Garranty soit pled' envers l'issue en l' Taile, en son action de Formedon, il poit mier l' matter com est avantdit, coment le garrantie est defeat, &c. & issint il poit bien maintener son action, &c.

discontinuee enter into the Land, then shall the issue in taile have his recovery by writ of *Formedon*, because the collateral Warranty is defeated. And so if any such collateral warranty be pleaded against the issue in Taile in his action of *Formedon*, he may shew the matter as is aforesaid, how the warranty is defeated, &c. and so he may well maintain his action, &c.

HEre Littleton putteth another case upon the same ground and reason, viz. where the state whereunto the warranty is annexed, is defeated, there the warranty it self is defeated also, which is one of the Maximes of the Common Law.

Sect.743.

ITem, si Tenant en Taile fait un feoffment a son Uncle, & puis l'Uncle fait un feoffement en fee ovesque Garrantie, &c. a un autre, & puis le feoffee del Uncle enfeoffa arrer mainе l'Uncle en fee, & puis l'Uncle enfeoffa un estrange en fee sans Garrantie, & morust sauns issue, & le Tenant en tail morust, & issue en l' taile voyle poer son br de Formedon envers le strange que fuit le darrein feoffee, & ceo per l'Uncle, l'issue ne serra unque barre per le Garrantie que fuit fait per le Uncle al dit primer feoffee, de son Uncle, pur ceo que le dit Garrantie fuit defeat & anient, pur ceo que le Uncle a luy repist ey grand estate de son primer feoffee a que le Garrantie fuit fait, si come meisme le feoffee avoit de luy. Et la cause pur que le Garrantie est anient en ceo cas, est tres-fel. que si le Garrantie ensteroit en sa force, donque le Uncle Garrantet a luy meisme, que ne poit estre.

ALso, if Tenant in taile make a feoffement to his Uncle, and after the Uncle make a feoffement in fee with warranty, &c. to another, and after the feoffee of the Uncle doth re-enfeoffe again the Uncle in fee, and after the Uncle enfeoffeth a stranger in fee without warranty, and dieth without issue, and the Tenant in Tail dieth, if the issue in Tail will bring his Writ of *Formedon* against the stranger that was the last feoffee, and that by the Uncle, the issue shall not be barred by the Warranty that was made by the Uncle to the first feoffee of his uncle, for that the said warranty was defeated and taken away, because the uncle took back to him as great an estate from his first feoffee, to whom the warranty was made, as the same feoffee had from him. And the cause why the warranty is defeated, is this, *viz.* that if the warranty should stand in his force, then the uncle should warrant to himself, which cannot be.

Here

ſcent of the Collateral warranty, there albeit the warranty deſcend firſt, and after the right doth deſcend, the Collateral warranty ſhall bind, as here in this Caſe of our Author expreſſly appeareth. But where the right is not in eſſe in the heir, or any of his Anceſtors, at the time of the fall of the warranty, there it ſhall not bind.

(u) 16 E.3.48.30 H.8.42

(u) As if Lord and Tenant be, and the Tenant make a Feoffment in Fee with warranty, and after the Feoffee purchaſe the Seigniory, and after the Tenant ceſs, the Lord ſhall have a Ceſſavit; for a warranty doth extend to rights precedent, and never to any right that commenceth after the warranty, whereof more ſhall be ſaid in this Section. Alſo a warranty ſhall never bar any eſtate that is in poſſeſſion, reverſion or remainder, that is not devеſted, diſplaced, or turned to a right before, or at the time of the fall of the warranty.

nant en taile diſcontinue le taile en fee, & le diſcontinuee eſt diſſeiſe & le frere del tenant en le taile releſſa per ſon fait a le Diſſeiſor tout ſon droit, &c. ove garrantie en fee, & morust ſans iſſue, & le tenant en l'taile ad iſſue & devie, ore iſſue eſt barr de ſon action per force de collateral garrantie deſcendue ſur luy: mes ſi apres ceo le Diſcontinuee enter ſur le diſſeiſor, donqs poit l'heire en le taile aver bien ſon action de Formedon, &c. pur ceo que le garrantie eſt anientie & defeat, car quant garrantie eſt fait a un home ſur eſtate que adonques il avoit, ſi l'eſtate ſoit defeat le garrantie eſt defeat.

in Fee, and the Diſcontinuee is diſſeiſed, and the Brother of the Tenant in tail releaſeth by his deed to the diſſeiſor all his right, *&c.* with warranty in Fee, and dieth without iſſue, and the Tenant in tail hath iſſue and die; now the iſſue is barred of his action by force of the collateral Warranty deſcended upon him. But if afterwards diſcontinuee entreth upon the diſſeiſor, then may the heir in tail have well his action of *Formedon*, *&c.* becauſe the warranty is taken away and defeated; for when a warranty is made to a man upon an eſtate which he then had, if the eſtate be defeated, the warranty is defeated.

(w) Lib.1.fol.67. Archers caſe.

(w) If a Leaſe for life be made to the Father, the Remainder to his next heir; the Father is diſſeiſed and releaſeth with warranty and dieth; this ſhall bar the Heir. Although the warranty doth fall, and the remainder cometh in eſſe at one time.

(y) Temps E.1. Voucher 296. 31 Aſſ.13.21. Aſſ.36. 41. Aſſ.6.33. E.3.tit. Gar.74. lib.10.fol.97. E. Seymors caſe.

(y) If there be Father and Son, and Son hath Rent-ſervice, Suit to a Mill, Rent-charge, Rent-ſeck, Common of Paſture, or other profit apprender out of the Land of the Father, and the Father maketh a feoffment in fee with warranty, and dieth, this ſhall not bar the Son of the Rent, Common, or other profit apprender, quamvis clauſula ſpecialis Warrantie vel Acquitancie in chartis tenentium inſeratur, quia in tali caſu tranſit terra cum onere; and he that is in ſeiſin or poſſeſſion need not to make any entry or claim: and albeit the Son after the feoffment with warranty, and before the death of the Father had ben diſſeiſed, and ſo being out of poſſeſſion, the warranty deſcended upon him; yet the warranty ſhould not bind him, becauſe at the time of the warranty made, the ſon was in poſſeſſion. (*) So if my collateral Anceſtor releaſe to my tenant for life; this ſhall not bind my Reverſion or remainder, becauſe that the reverſion or remainder continued in me. But if he that hath rent, common, or any profit out of the Land in tail, diſſeiſe the tenant of the land, and maketh a feoffment of the Land, and warrant the land to the feoffee and his heirs, (a) regularly the warrant doth extend to all things iſſuing out of the Land; that is to ſay, to warrant the land in ſuch plight and manner, as it was at in the hand of the feoffor, at the time of the feoffment with warranty, and the feoffee ſhall vouch, as of Lands diſcharged of the Rent, &c. at the time of the feoffment made.

(*) 45 E.3.31.21 H.7.11. Vide Sect.698.

(a) 21 E.4.16.21 H.7.9. 3 H.7.4.7 H.4.17. 30 H.8. Dyer 42. 30 E.3.30. 9 E.3.78. 45 E.3. Voucher 72. F.N.B.125.14 H.8.6.

A woman that hath a Rent-charge in fee entermarrieth with the tenant of the Land, an ſtranger releaſeth to the tenant of the Land with warranty, he ſhall not take advantage of this warranty, either by voucher or Warrantia Chartæ, for the wife, if her husband die, or the Heir of the wife living, the husband cannot have an action for the Rent upon a Title before the

¶ HEre Littleton putteth another case, where a warranty may be defeated, as when the Uncle taketh back as large an estate, as he had made, the warranty is defeated, because he cannot warrant Land to himself. (g) And so it is if the Uncle had made the warranty to the Feoffee, his heirs and assigns, and taken back an estate in fee, and after infeoffed another; yet the warranty is defeated, for that he cannot be assignee to himself, and a man shall not regularly vouch himself as assignee of a fee simple, and the Law will not suffer things inutile and unprofitable. (h) And yet if the Father be infeoffed with warranty to him and his heirs, the Father enfeoffeth his heir apparent in fee and dieth, he (as it hath been said) shall vouch himself, and the heir in Borough English by reason of the act in Law determined the warranty between the Father and the Son.

(g) Temps E.1. Voucher 266. 40 E.3.14. 43 E.3. 38. 25 E.3.47. b. 26 E.3.68. 14 E. 3. Vouch.106. 16 E.3. Vouch. 87. 19 E.3. Vouches 122. 17 E.3.73,74. 24 H.6.29.

(h) 40 E.3.14.2. 41 E.3.15.2.

(i) But if a man maketh feoffment in fee with warranty to the Feoffee, his heirs and assigns, and the Feoffee re-enfeoffeth the Feoffor and his wife, or the Feoffor and any other stranger, the warranty remaineth still; or if two do make a feoffment with warranty to one and his heirs, and assigns, and the Feoffee re-enfeoffe one of the Feoffors, the warranty doth also remain.

(i) 11 H.4.20. 42. 17 E.3. 47.59. 18 E.3.56. 29 E.3.46. 33 E.3.9.

Sect. 744.

¶ MEs si le feoffee feisoit estate al uncle p terme de vie, ou en tail, savant le reversion, &c. ou que il fait done en taile al Uncle, ou un leas pur terme de vie, le remainder ouster, &c. en test cas le garrantie nest pas tout ousterment anient, mes est mis en suspence durant lestate que le Uncle ad. Car apres ceo que l'Uncle est mort sans issue, &c. donques celuy en le reversion, ou celuy en le remainder barreroit lissue en taile en son briefe de Formedon per le collateral garranty en ttel cas, &c. Mes auterment est lou le Uncle aboit auxy graund estate en la terre de le Feoffee, a que le Garrantie fuit annexe, &c. Car en ceux cas le garrantie ne serra extinct, mes demurra en suspence, &c.

BUT if the Feoffee had made an estate to his Uncle for term of life, or in tail, saving the reversion, &c. or a gift in tail to the Uncle, or a Lease for term of life, the Remainder over, &c. In this case the warranty is not altogether taken away, but is put in suspence during the estate that the Uncle hath. For after that, that the Uncle is dead without issue, &c. then he in the Reversion, or he in the Remainder shall bar the issue in tail in his Writ of *Formedon* by the collateral warranty in such case, &c. But otherwise it is where the Uncle hath as great estate in the Land of the Feoffee to whom the Warranty was made, as the Feoffee had

¶ *Pur terme de vie, ou en taile.* Here it appeareth (k) that by taking (l) Lease for life, or a gift in tail, the warranty is suspended.

(k) 16 E.3. Vouch.87. 44 E.3.38. 26 E.3.56. 17 E.3.47. 10 E.3.30. 12 E.3. Counter plea de Vouch.42. 14 E.3. ib.12.

(l) 6 E.2. Vouch.247. 3 E.3. ib. 201. 5 E.3. ib.171. 18 E.3.52. 14 E.3. Vouch.109. 31 E.3. ib.25. 43 E.3.7. 44 E.3.38. 32 E.3. Voucher 102.

A man enfeoffeth a woman with warranty, they intermarry and are impleaded, upon the default of the husband the wife is received, she shall vouch her husband, &c. notwithstanding the warranty was put in suspence.

(m) And so on the other side, if a woman infeoffe a man with warranty, and they intermarry, and are impleaded, the husband shall vouch himself and his wife by force of the said warranty.

(m) 4 E.2. Voucher 243. 246.

(n) An infant en ventre sa mere may be vouched if God give him a birth, and if not such a one heir to the warranty; but he cannot be vouched alone without the heir at the Common Law; for Process shall be presently awarded against him.

(n) Temps E.1. Gard.1,3. 31 E.1. Brief 872. 8 E.2. Vouch. 237. 11 E.3.9. ib. 13. 11 E.3. quar. imp. 358. 38 E.3.7. & 29. 41 E.3. Dower 9 H.6.21. Pl. Com. Stowels case per Saunders & Brown.

¶ *Mes est mise en suspence.* (o) Tenant in tail maketh a feoffment in fee with warranty, and disseiseth the discontinuee, and dieth seised, leaving assets to his issue. Some hold that in respect of this suspended warranty and assets, the issue

(o) 21 E.3.36. a. & b. 38 E.3.21. 44 E.3.26. 45 E.3. Title 32. 44 E.3. ibid.31. 33 E. ibid.4.

iſſue in tail ſhall not be remitted, but that the Diſcontinuee ſhall recover againſt the iſſue in tail, and

rantie fuit fait, come le Feoffee avoit de luy, Cauſa patet.

hath himſelf. *Cauſa patet.*

he take advantage of his warranty, if any he hath, and after in a Formedon brought by the iſſue, the Diſcontinuee ſhall bar him in reſpect of the warranty and aſſets; and ſo every mans right ſaved.

Sect. 745.

Sect. 733. 708.

¶ *Ou releaſe fait per luy oue garranty.* Note, a warranty grounded upon a releaſe. Hereof you ſhall read before in this Chapter.

¶ Item, ſi le Uncle apres tiel feoffement fait oue Garrantie, ou releaſe fait p luy oue Garrantie ſoit attaint de felony, ou utlage de felony, riel collateral Garrantie ne barre my, ne grievera l' iſſue en le taile, pur ceo, que per le attainder de felony, le ſank eſt corrupt enter eux, &c.

Alſo, if the Uncle after ſuch feoffment made with Warranty, or a Releaſe made by him with Warranty, be attaint of felony, or outlawed of felony, ſuch collaterall Warranty ſhall not bar nor grieve the iſſue in the tail, for this that by the attainder of felony the blood is corrupted between them, &c.

2 E.2. Voucher 237.

¶ *Soit attaint de felony, ou utlage, &c.* Note, according to Littleton here, there be two manner of Attainders; the one is after apparence, and that in three manners; by confeſſion, by Battel, or by verdict; the other upon Proceſs to be Outlawed which is an attainder in Law. But (as hath been ſaid) there is a great diverſity, as to the forfeiture of Land, between an Attainder of felony by Outlawry upon an Appeal, and upon an Inditement; for in the caſe of an Appeal, The Defendant ſhall forfeit no lands, but ſuch as he had at the time of the Outlawry pronounced; but in caſe of Inditement, ſuch as he had at the time of the felony committed; and the reaſon of this diverſity is evident, for that in the caſe of Appeal there is no time alledged in the Writ when the felony was done; and therefore of neceſſity it muſt relate in that caſe onely to the judgment of the Outlawry: but in the caſe of Inditement there is a certain time alledged; and therefore in that caſe it ſhall relate to the time alledged in the Inditement when the felony was committed. But in the caſe of the Inditement there is alſo a diverſity to be obſerved; (o) for as hath been ſaid, it ſhall relate to the time alledged in the Inditement for avoiding of eſtates, charges, and incumbrances made by the Felon after the Felony committed; but for the mean profits of the Land it ſhall relate only to the judgment, aſwell in this caſe of Outlawry, as in other caſes. And where Littleton ſaith (Attaint de felony) if a man be convicted of fellony by verdict, and delibered to the Ordinary to make purgation (p) he cannot be vouched, for that the time of his Purgation (if any ſhould be) is uncertain, and the demandant cannot be delayed upon ſuch an uncertainty; but the Tenant is not without remedy, for he may have his Warrantia cartæ.

(o) 33 E.3. Forfeit. 30. 38 E.3.31. 3 E.4.25. 19 E.4.2. Pl. Com. 488. b.

(p) 8 E.2. Voucher 237. Vide 38 E.3.29. b. Simile.

¶ *Attaint.* Of this word hath been ſpoken in the ſecond Book, in the Chapter of Villainage.

Upon ſeveral Attainders of Felonies, there lie three ſeveral Writs of Eſcheat, viz.

(*) Dame Hales caſe in Pl. Com. fol. 262.

(*) Firſt, when he hath judgment to be hanged. Secondly, when he is Outlawed. Thirdly, when he abjureth the Realm.

(q) 8 E.3. Judgm. 225.

(q) The Defendant in an Appeal of Death did wage battel, and was ſlain in the field, yet judgment was given that he ſhould be hanged, and the Juſtices ſaid that it is altogether neceſſary, that ſuch a Judgment be given; for otherwiſe the Lord could not have a writ of Eſcheat.

(r) 13 E.3. Petition 2.

(r) And in Eire it hath been ſeen, that a man hath been attainted after his death, by preſentment, &c. The difference between a man attainted and convicted, is, that a man is ſaid convict before he hath judgement; as if a man be convict by Confeſſion, Verdict, or Recreancy. And when he hath his judgment upon the Verdict, Confeſſion, or Recreancy,

Recreancy, or upon the Outlawry, or abjuration, then is he said to be attaint. And thus is the Law taken at this day notwithstanding (f) some diversity of opinions in our Books.

If a Felon be convicted by verdict, Confession, or recreancy, he doth forfeit his Goods and Chattels &c. presently, (t) For where a reason hath been yelded in our Books, that the praying of his Clergy, was a refusal of the judgement of the Law, and a slight in law, and for that cause he forfeited his goods and chattels, that doth not hold, for if a man be convict of petit Treason, or murder, or any other crime, for which he cannot have his Clergy, yet by the very conviction he forfeiteth his Goods and Chattels before attainder. And (u) Stanford (speaking of a Felon convict by verdict) saith, that he shall forfeit his goods, which he had at the time of the verdict given, which is the conviction in that case, and by the statute of 1 R. 3 cap. 3 no Sheriff, Baylife, &c. shall seise the goods of a Felon before he be convicted of the Felony, whereby it appeareth that the goods may be seised as forfeit after conviction. And the (x) old Statute is worthy of nothing. Provisum est in curia nostra coram justiciariis nostris, quod de cetero nullus homo captus pro morte hominis vel alia felonia pro qua debet imprisonari, dissesiatur de terris de tenementis vel catallis suis quousque convictus fuerit. So as by a conviction of a felon, his goods and chattels are forfeited, but by attainder, that is by Judgment given, his Lands and Tenements are forfeited, and his blood corrupted and not before.

(f) 10 E. 3. 12. 3 E. 3. Coron 365. 8 E. 2. ibid. 293. 21 H. 7.

(t) Dame Hales case, ubi supra 8 H. 4. 2.

(u) Stanf. Pl. Cor. fol 192 Lib. 3. fol. 110. Fortles case, vide 7 H. 4. 41. 1 R. 3. cap. 3.

(x) Statute de catallis felonum ver. Magna Charta fol. 66. 2. pars.

(y) If the party upon his arraignment refuse to answer according to Law, or say nothing, he shall not be adjudged to be hanged, but for his contempt to paine fort and dure, which worke no attainder for the Felony, nor forfeiture of his lands or corruption of blood. But in case of High Treason, if the party refuse to answer according to Law, or say nothing, he shall have such judgement by attainder, as if he had been convicted by verdict or confession.

(y) Stanf. Pl. Cor. 159. 185.

¶ *Felony* (*) Ex vi termini significat quodliber capitale crimen felleo animo perpetratum, in which sense murder is said to be done per feloniam, and is so appropriated by Law, as felonice cannot be expressed by any other word. (a) And in ancient times this word (Felonice) was of so large an extent as it included High Treason, and therefore in our ancient Books, by the pardon of all Felonies, High Treason, or counterfeiting of the great Seal, and of the Kings Coine &c. was pardoned. (b) But afterwards it was resolved, that in the Kings Pardon or Charter, this word (Felony) should only extend to common Felonies, and that High Treason should not be comprehended under the same, & therefore ought to be specially named, and yet that a pardon of all felonies should extend to petit Treason, wherefore by the Law at this day under the word (Felony) in Commissions, &c. is included petit Treason, Murder, Homicide, burning of Houses, Burglary, Robbery, Rape, &c. Chance-medly, se defendendo, and petit Larceny. (c) For such of these crimes for the which any shall have this Judgment, To be hanged by the neck till he be dead, he shall forfeit all his lands in fee simple, and his goods and chattels: for Felony by Chance-medly, or se defendendo or petit Larceny, he shall forfeit his goods and chattels, and no lands of any estate of Freehold or Inheritance. And all Felonies punishable according to the course of the Common Law, are either by the Common Law, or by statute. There is also a Felony punishable by the Civil Law, because it is done upon the High Sea, as Pyracy, Robbery, or Murder, whereof the Common Law did take no notice, because it could not be tried by twelve men. If this Pyracy be tried before the Lord Admiral in the Court of the Admiralty, according to the Civil Law, and the Delinquents there attainted, yet shall it worke no corruption of blood, nor forfeiture of his lands, otherwise it is if he be attainted before Commissioners by force of the Statute of (d) 28 H. 8. By the expresse purview of that statute about the end of the reign of Queen Eliz. certain English Pyrats that had robbed on the Sea Merchants of Venice in amity with the Queen being not known, obtained a Coronation Pardon, whereby amongst other things the King pardoned them all Felonies. It was (e) resolved by all the Judges of England upon conference and advisement, that this did not pardon the Pyracy, for seeing it was no Felony whereof the Common Law took conusance, & the Statute of 28 H. 8 did not alter the offence, but ordain a trial and inflict punishment, therefore it ought to be pardoned especially, or by words which tantamount, and not by the general name of Felony, and according to this resolution the Delinquents were attainted and executed.

(*) Glanvil. lib. 14 c. 3. Mailbr. ca. 25. W. 1. c. 13.

(a) 3 E. 4. 14. 13 E. 4. 10. 33 Ass. 49. 1 E. 3. 13. Stanf. Pl. Cor. 102. E. 8 H. 4. 2.

(c) Stanf. prær. 45. b. 16 E. 3. Coron. 16. & 3 E. 3. Coron. 301.

(d) 28 H. 8. cap. 15.

(e) Hil. 2. Jac. Regis.

Vide Mich. 7 & 8 Eliz. Dier 241. 14 Eliz. Dier 303.

Pyrate cometh of the word πειράτης, which signifieth a Rover at Sea. Attainder of Heresie, or Præmunire, worketh no corruption of blood, nor heresie, forfeiture of lands, but in case of præmunire, forfeiture of lands in fee simple, but not of lands in taile, as formerly hath been said, (f) By some statutes it is said, Sur forfeiture de corps & de avoire, or Sub foris factura omnium quæ in potestate sua obtinet, or to be at the Kings will, body, lands & goods, and the like, these are not extended to the loss of life or member, but to imprisonment, lands and goods. (g) But if an Act of Parliament saith, Erit judgement de vie & member, or subeat judicium vitæ vel membrorum, in that case judgment of death shall be given, as in case of Felony, viz. that he be

(f) Statute de Magna moneta tempore E. 1. 35 E. 1. de Carliſle, 20 E. 3. cap. 4.

(g) W. 2. ca. 34. Rot. Parl. 25 E. 1. 1 E. 2. de frang. priſonam. 14 E. 3. ca. 20. Stanf. Pl. Coron. 30, 31. 3 E. 3. Coron. 153. Brook tit. Co. an. 203. 9. E. 4. 16.

hanged by the neck till he be dead, and consequently his blood is corrupted, (as our Author here saith) and shall forfeit as in the case of Felony.

(h) There is also a Court of the Constable and Marshal, who have Conusance of Contracts, of Deeds of Arms, and of war out of the Realm, and also of things touching war within the Realm, which may not be determined or discussed by the Common Law, and also all Appeals of offences done out of the Realm, and they proceed according to the Civil Law: but these things more properly pertain to another kind of Treatise, and therefore I shall speak no more thereof in this place, but only for the satisfaction of the studious Reader, to quote some Authorities of Law touching the jurisdiction of that Court; that he may have some taste thereof.

In the same manner it is if a man be attainted of High Treason, the warranty is also defeated.

¶ *Le sanke est corrupt enter eux*, &c. * Aptly is a man said to be attainted, attinctus, for that by his attainder of treason or Felony his blood is so stained and corrupted, as first, his children cannot be heirs to him, nor to any other Ancestor; and therefore the warranty cannot binde, for thereby Heirs only are to be bound.

Secondly, If he were noble or gentle before, he and all his children and posterity are by this attainder made base and ignoble, in respect of any Nobility or Gentry which they had by their birth.

Thirdly, This corruption of blood is so high, that regularly it cannot absolutely be salved but by Authority of Parliament: All which is implied in the same (&c.)

(h) Bract.l.4.fol.148. 42 E.3.3.13 R.2.c.2 Rot.Par.21 R.2.nu.19. 2 H.4.c.14. 3 H.4.4.& 5.37 H.5 21. Rot. Parl. 8 R.2.nu.31. Forteſc.c. 32. Rot.Par. 2 H.4.74. 11 H.4 3.30 H. ... Stanf.Plscor.65. Stat.de Aſſiz 4 E.1.Br.Cor. 196. Rot.Parl. 2 H.6. nu.9. Rot. Parl.5 H.4. nu 39. Rot. Vall. 9 H.4. num.14.8 H.6 num.36. 21 E.4.17 b.Catesby. 1 H.7. per Vavaſor. 18 E. ... Quar.imp.175. 6 E. ... Paſc.14 E.3. in Scacdle Count de Kents caſe.p.39 E.3. cor.Reg.Rot.49.le Count de Lanc caſe. Rot.Parl.28 H.3.nu.8. Mortimers caſe, Rot Parl.23.8 E.nu 13. Le Countoe de Arundels caſe.

* Stanf.lib.3.Pl.cor. 195.b.27 E 3.77.13 H. 4. 8. Vide Littl.lib. 1. in the Chap of Dower.

Sect. 746, 747.

¶ *LE iſſue en Taile poit enter.* And the reason is, for that by the attainder of the Father, it is now in judgment of law but a release without warranty, for albeit the warranty at the time of the Release was effectual, yet it worketh no discontinuance, unless it descendeth upon the issue in Tail, so as if it be defeated, extinct, or determined in the life of the Tenant in tail, then no discontinuance is wrought: and so it is if the Tenant in tail hath issue, and releaseth to the Disseisor with warranty, and after is attainted of felony, and after obtaineth his pardon and dieth, the issue in tail may enter; * for the Pardon doth not restore the blood as to the warranty, nor maketh the Issue in that case inheritable to the warranty. But if the Issue in tail in that case had been attainted of Felony in the life of his Father, and obtained his Charter of pardon, and then his Father had died, the Issue cannot enter into the

¶ ITem, si Tenant in Taile soit disseisie, & puis fait release al Disseisor ove Garrantie en fee, & puis le Tenant en tayle est attaint, ou utlage de Felony, & ad issue & murust, en cest case issue en taile poit enter sur le disseisor. Et la cause est, pur ceo que rien fait Discontinuance en cest case forsque le Garrantie, & Garrantie ne poit descender al Issue in Taile, pur ceo que le sanke est corrupt per enter celuy que fist le Garrantie, & Issue en Taile.

* 7 E.3.77.1 E 3.1.6 E 3 55.9.H.5.9.11 E.1. Ducont. 7.46 E.3. Petit. 20.26. Aſſ.2.49. Aſſ.4. 29. Aſſ.11.13 H.4.8. 13 H.7.17. pl.Com.in Walſinghams caſe. 3 E.2 Deſcent. Br.64. Stanf Pl. Cor.195,196. See in the Chap. of Tenant by the Courteſie, touching this matter.

ALſo, if Tenant in Tail be diſſeiſed, and after make a Releaſe to the Diſſeiſor with Warranty in Fee, and after the Tenant in tail is attaint or outlawed of Felony, and hath iſſue and dieth; In this caſe the Iſſue in Tail may enter upon the Diſſeiſor: and the cauſe is, for this; that nothing maketh Diſcontinuance in this caſe but the Warranty, and Warranty may not deſcend to the Iſſue in Tail, for this, that the Blood is corrupt between him that made the Warranty, and the Iſſue in Tail.

Sect. 747.

¶ CAr le Garranty touts faits demurt a le Common Ley, & la Common Ley eſt, Que quant home eſt attaint ou utlage de Felonie, quel utlagarie eſt un attainder en Ley, que le ſanke perenter Luy & ſons fits, & touts auters queux ſerra dits ſes heires eſt corrupt, iſſent que riens per deſcent poit deſcender a alcun que poit eſtre dit ſon heire per le Common Ley. Et la Feme de tiel home que iſſint eſt attaint de Felonie, ne ſerra jammes endow de les Tenements ſa baron iſſent attaint. Et la cauſe eſt pur ceo que homes pluis eſchuerent de fait alcuns felonies. Mes iſſue en Tayle quant a les tenements tailes neſt pas en tiel cas barre, pur ceo que eſt inherit per force de le Statute, & nemy per le courſe de Common Ley, & pur ceo tiel attainder de ſon pier ou de ſon anceſtor en le Taile ne Luy ouſter de ſon droit per force de le taile, &c.

FOr the Warranty alwayes abideth at the Common Law; and the Common Law is ſuch, that when a man is attaint or outlawed of felony, which Outlawrie is an Attainder in Law, that the blood between him and his ſonne, and all others which ſhall be ſaid his Heires, is corrupt, ſo that nothing by deſcent may deſcend to any that may be ſaid his Heire by the Common Law: And the wife of ſuch a man that is ſo attaint ſhall never be endowed of the Tenements of her husband ſo attainted. And the cauſe is, for that men ſhould more eſchew to commit Felonies. But the iſſue in Taile as to the Tenements tailed is not in ſuch caſe barred, becauſe he is inheritable by force of the Statute, and not by the courſe of the Common Law; And therefore ſuch attainder of his Father or of his Anceſtor in the Taile ſhall not put him aut of his Right by force of the Taile &c.

land in reſpect of the corruption of blood upon the Attainder of himſelf. (h) And it is a general rule, That having reſpect to all thoſe whoſe blood was corrupted at the time of the attainder; the pardon doth not remove the corruption of blood neither upward nor downward. As if there be grandfather, father and ſon, and the grandfather and father have divers other ſons, if the father be attainted of Felony and pardoned, yet doth the blood remain corrupted not only above him and about him, but alſo to all his children born at the time of his attainder. But in the caſe of Littleton, if tenant in taile at the time of his attainder had no Iſſue, and after the obtaining of his pardon had iſſue, that iſſue ſhould have been bound by the warranty; for by the pardon he was as a new creature, tanquam filius terræ, whoſe blood upwards remains corrupted; but for the iſſue had after the Pardon, he is inheritable to his father; and if his father had iſſue before the Pardon, and had iſſue alſo after and dieth, nothing can deſcend to the youngeſt, for that the eldeſt is living and diſabled. But if the eldeſt ſon had died in the life of the Father without iſſue, then the youngeſt ſhould inherit.

(h) Bract. lib. 3. fol. 1. 2. 133. 279. & lib. 5. 374. Brit. fol. 2. 5. b Flet. lib. 1. cap. 28.

¶ *Le Garrantie demurt al Common Ley.* The collateral warranty is not reſtrained by the ſtatute of Donis Conditionalibus; but a lineal warranty is reſtrained by the Statute, unleſs there be Aſſets, as formerly at large hath been ſaid. Vide Sect. 711, 712.

¶ *Et la feme de tiel home que iſſint eſt attaint, &c. ne ſerra jammes endow, &c.* It is to be obſerved, that the Judgement againſt a man for Felony, is, That he be hanged by the neck until he be dead, but implicative, (as hath been ſaid) he is

punished first in his wife, That he shall lose her dower. Secondly, in his children, That they shall become base and ignoble, as hath been said. Thirdly, that he shall lose his posterity, for his blood is stained & corrupted, that they cannot inherit unto him or any other Ancestor. Fourthly, that he shall forfeit all his lands and tenements which he hath in fee, and which he hath in taile, for term of his life. And fifthly, all his goods and chattels. And thus severe it was at the Common Law, and the reason hereof was, that men should fear to commit Felony, ut pœna ad paucos, metus ad omnes perveniat. And so it is truly said, Et si meliores sunt quos ducit amor, tamen plures sunt quos corrigit timor. And so it is à fortiori in case of High Treason. But some Acts of Parliament have altered the Common Law in some of these points. First, by the Statute of Donis Conditionalibus, lands intailed were not forfeited, neither for Felony, nor for Treason, but for the life of Tenant in Taile: This Act was made by King Edward the first, who (as our Books (i) speak) was the most sage King that ever was: (k) And the cause wherefore this statute was made, was to preserve the inheritance in the blood of them to whom the gift was made, notwithstanding any attainder of Felony or Treason. And this Act in History is called Gentilitium municipale. For that by this Act the families of many Noblemen & Gentlemen were continued & preserved to their posterities. And this Law continued in force from the thirteenth year of King Edward the first, until the (l) twenty sixth year of King Henry the eighth, when by Act of Parliament Estates in Taile are forfeited by attainder of High Treason. But as to Felonies (whereof our Author here speaketh) the statute of Donis Conditionalibus doth yet remain in force, so as for attainder of Felony lands or tenements entailed are not forfeited, but only (as hath been said) during the life of Tenant in Tail, but the Inheritance is preserved for the Issues.

(i) 5 E.3. 14. 9 E. 3.22. (k) 7 H.4.18. 19 H.6.71. See Lit. lib. 4. cap. Dow. sect. 55.

(l) 26. H.8.cap.13. 33 H.8.cap. 28. 5 E.6. cap.11.

(m) Stamf.Pl.Cor.195.

(m) The wife of a man attainted of high Treason or petit Treason, shall not be received to demand dower, unless it be in certain cases specially provided for. But the wife of a person attainted of Misprision of Treason, Murther, or Felony, is dowable since our Author wrote, (n) by the statute in that case made and provided, which is more favourable to the woman than the Common Law was.

(n) 1 E.6.c. 13. 5 E.6. cap.11. 5 El.cap.1.& 1. 18 El. cap. 1. 1 H.4.3. Vide Sect.55.

(o) 6 H.4.1. 45 E.3. Vouch. 72. Pl.Com.292. 26 E.3. Age 46. 18 H.3. Vouch 281. 13 E. 3. Garr.77. See in the Chapter of Villenage Sect.200.

(o) If a Seigniory be granted with warranty and the Tenancy escheat, the Seigniory whereunto the warranty was annexed is extinct, and consequently the warranty defeated and it shall not extend to the land, Et sic similibus.

If a collateral Ancestor release with warranty, and enter into Religion, now the warranty doth bind, but if after he be deraigned, now it is defeated.

Sect. 748.

LIttleton having spoken in what cases warranties may be defeated and extinguished by matter in law, now he sheweth how a warranty may be discharged or defeated by matter in Deed: and hereupon he putteth an example of a Release in three several manners:

First, By a release of all warranties.

Secondly, By a release of all Covenants real.

And thirdly, By a release of all demands.

Vide lib. 8.fol.153.154. Altham's case. 46 E. 3.2. 45 E.3. 23. Vide before in the Chapter of Release. Sect.508.

(q) 14 Ass. pl. 2. 3 Eliz. Dyer 218. 9 E. 4. 52. b.

(q) If a man make a gift in Taile with warranty, this warranty is also intailed, therefore a Release made by Tenant in Taile of the warranty, shall not barre the Issue, no more than his Release shall bar the Issue to bring an attaint upon a false Verdict, or a writ of Error upon an erroneous judgment

ITem, si Tenant en le Taile enfeoffa son Uncle, le quel enfeoffa un auter en fee ove garr &c. si apres le feoffee per fait relessa a son Uncle touts manners des Garranties, ou touts manners de Covenants real, ou touts manners de dues, per tiel Release le Garrantie est extinct. Et si le Garrantie en cel case soit pleade envers le heire en taile, que porta son Briefe

ALso if Tenant in Taile enfeoffs his Uncle, which infeoffs another in fee with warranty, if after the feoffee by his Deed release to his Uncle all manner of warranties, or all manner of Covenants reals, or all manner of Demands, by such release the Warrantie is extinct. And if the Warranty in this case be pleaded against the Heire in Taile that bringeth his VVrit of *Forme-*

de Formedon p̄ barrer le heire de ſon action, ſi l'heire avoit le dit releas, & ceo pledaſt, il deſeteta le plee en barre, &c. Et mults auters caſes & matters y ſont, per queux home poit defeater garrantie, &c.

don, to bar the heir of his action, if the heir have and plead the ſaid releaſe, &c. he ſhall defeat the plea in bar, &c. and many other caſes and matters there be, whereby a man may defeat a Warranty, &c.

judgment given againſt the Father, nor his gift can bar the iſſue of the deed that creates the ſtate tail, nor of any other Deed neceſſary for defence of the title.

¶ *Apres le feoffe releſſa:* Littleton here putteth his caſe where one is bound to warrant: put the caſe (r) then that two make a feoffment in fee, and warrant the Land to the feoffee and his heirs, and the Feoffee releaſe to one of the Feoffors the warranty, yet he ſhall vouch the other for the moyety. And ſo it is if one infeoff two with warranty, and the one releaſe the warranty, yet the other ſhall vouch for his moyety. (r) 45 E. 3. 23.

¶ *Si le heire avoit le dit releaſe*, &c. Here it appeareth that the releaſe being made to the Uncle being his Anceſtor, the deed doth after the deceaſe of the Uncle belong to him, and therefore he cannot plead it, unleſs he ſheweth it forth.

¶ *Et mults auters caſes & matters y ſont per queux home poit defeater Garrantie*, &c. As namely by a Defeaſance as other things executory may. Alſo a warranty may loſe his force by taking benefit of the ſame. In a Præcipe the Tenant voucheth, and at the Sequatur ſub ſuo periculo, the Tenant and the Vouché made default, whereupon the Demandant hath judgment againſt the Tenant. And afterwards the Demandant brings a Scire facias againſt the Tenant to have Execution, in this caſe the tenant may have a Warrantia Chartæ. And if in that caſe a ſtranger had brought a Præcipe againſt the Tenant, he might have vouched again, for by the judgment given againſt the tenant the warranty loſt not his force; but if the Tenant had judgment to recover in value againſt the vouché, he ſhould never vouch again by reaſon of that warranty, becauſe he had taken advantage of the warranty. And it is to be obſerved, that upon the proceſs of Summoneas ad warrantizandum if the Sheriff return the Vouché ſummoned, and he make default, the Tenant ſhall have a Capias ad valentiam, but if he return that the Vouché had nothing, then after the Sicut alias & pluries a Sequatur ſub ſuo periculo ſhall iſſue, and there if the Vouché make default, the Tenant ſhall not have judgment to recover in value, for he was never ſummoned; and it appeareth of record that he hath nothing, but in the Capias ad valentiam it appeareth that he had aſſets, and he had been ſummoned before: but in ſome ſpecial caſes there ſhall be two recoveries in value upon one warranty. As if a diſſeiſor give lands to the Huſband and wife, and to the Heirs of the huſband, the huſband alieneth in fee with warranty and dieth, the wife bringeth a Cui in vita, the Tenant vouch and recovereth in value, if after the death of the wife, the Diſſeiſee bring a præcipe againſt the alienee, he ſhall vouch and recover in value again. 43 E. 3. 17. Pl. Com. in Browings caſe,

(ſ) So it is where the wife bringeth a writ of dower againſt the alienee, he ſhall recover in value, and after her death he ſhall recover in value again, upon the ſame warranty. (ſ) 45 E. 3. Voucher. 734

In the ſame manner it is if a man be ſeiſed of a rent by a Defeaſible title, and releaſeth to the tenant of the land all his right in the land, and warranteth the land to him and his heirs, if he be impleaded for the Rent, he ſhall vouch and recover in value for the Rent; and if after he be impleaded for the Land, he ſhall vouch & recover in value again for the land: but in theſe and the like caſes, the reaſon is in reſpect of the ſeveral eſtates recovered; but for one and the ſame eſtate he ſhall never recover but once in value; and though the land recovered in value be evicted, yet ſhall he never take benefit of the warranty after. And as warranties may be defeated in the whole, ſo they may be defeated as to part of the benefit that may be taken of the ſame. (t) As he that hath a warranty may make a defeaſance not to take any benefit by way of voucher: In the like manner that he ſhall take no advantage by way of Warrantia Chartæ, or by way of Rebutter. (t) 7 H. 6. 43. 13. Aſſ. 8. 13 E. 3. Gar. 24. 25. 37. 22 H. 6. 51. 7 H. 7. 6.

Sect. 749.

¶ HEre Littleton sheweth, that in the same manner that a collateral warranty may be defeated by matter in deed, or by matter in Law, so may to all intents and purposes a lineal warranty, whereof he putteth an example of a lineal warranty and assets.

¶ *Et un lineal Garrantie*, &c. *ousque ceo que Assets la luy descendist*, &c. Here it appeareth by Littleton, that a lineal warranty & assets is a good plea in a Formedon in the descender. Wherein it is to be known, that if tenant in tail alieneth with warranty, and leave assets to descend, if the issue in tail doth alien the assets and die, the issue of that issue shall recover the land, because the lineal warranty descendeth only to him without assets, for neither the pleading of the warranty without the assets, nor the assets without the warranty is any bar in the Formedon in the descender. But if the issue to whom the warranty & assets descended had brought a Formedon, and by Judgment had been barred by reason of the warranty & Assets: In that case albeit he alieneth the Assets, yet the estate tail is barred for ever: for a bar in a Formedon in the Descender, which is a writ of the highest nature that an issue in tail can have, is a good bar in any other Formedon in the Descender, brought afterwards upon the same gift.

Temps E.1. Gar. 89. 34. E.1. ibid. 88. 11 E.1. ibid. 83. 4 E.3. 24. 5 E.3: 14. 40 E.3. 9. 14 H.4. 39. 24. H.8. tail, Br. 33. 4 Mar. Dier, 139. Lib. 10. fol. 37, 38. in Mary Portingtons case.

¶ ET est ascavoir, que en meisme le manner come garrantie collateral poit estre defeat per matter en fait, ou en ley, en meisme le manner poit lineal garrantie estre defeat, &c. Car si heire en tail' porta briefe de Formedon, & un lineal garrantie, de son ancester enheritable per force de le Taile, soit plede enbers luy, ove ceo que assets a luy descendist de fee simple, q̄ il ad per meisme launcester que fist le garrantie, si l'heire q̄ est demandant poit adnuller, et defeater le garrantie ceo suffist a luy. Car le descent des auters tenements de Fœ simple ne fait riens p̄ barrer heire sans le garrantie, &c.

AND it is to be understood, that in the same manner as the Collateral warranty may be defeated, by matter in Deed, or in Law; in the same manner may a lineal Warranty be defeated, *&c.* For if the heir in tail bringeth a writ of *Formedon*, and a lineal warrantie of his Ancestor inheritable by force of the Tail be pleaded against him, with this that asets descended to him of fee simple, which he hath by the same Ancestor that made the warranty, if the Heir that is demandant may adnul and defeat the warranty, that sufficeth him: For the descent of other tenements of Fee-simple maketh nothing to bar the Heir without the warranty, *&c.*

¶ A *Toy mon fitz*, &c. Here our Author calleth (as many times in these Books he hath done) not only his Son Richard, but every student of the Law to be accounted his Son, and worthily, for that seeing our Author had the honour to be in his time the Father of the Law, and all good students in the Law justly account themselves the sons of the Law (for otherwise they are not worthy of the profession) our Author, as a careful and provident father, as it hath manifestly appeared, gave excellent instructions in these his Books, both to his own Son, and to his adopted Sons, to make them from age to age the more apt and able to understand the arguments and reasons of the Law.

¶ ORe jeo ay fait a toy mon fits trois livres.

NOw I have made to thee my son three Books.

¶ Le

¶ Le primer Livre es des Estates que homes ount en terres ou tenements: cestascavoir,

The first Book of Estates which men have in Lands and Tenements: That is to say,

De Tenant en Fée simple	Cap. 1.
De Tenant in Fee taile	2
De Tenant in Fee taile apres possibilitie d'issue extinct.	3
De Tenant per le Courtesie Dengleterre	4
De Tenant en Dower	5
De Tenant a Terme de vie	6
De Terme pur terme des ans	7
De Tenant a volunt per le Common Ley	8
De Tenant a volunt per custome del manoz	9
De Tenant per le Verge.	10

La second Livre.

De Homage	Cap. 1.
De Fealtie	2
De Escuage	3
De Service de Chivaler	4
De Socage	5
De Frankalmoigne	6
De Homage auncestrel	7
De Grand Serjeantie	8
De Petit Serjeantie	9
De Tenure en Burgage	10
De Tenure en Villenage	11
De Rents.	12

¶ Et ceuſt deux petits livres jeo ay fait a toy, pur le melioz entender de certain Chapters de le antient Livre de Tenures.

And theſe two little Books I have made to thee, for the better underſtanding of certain Chapters of the ancient Book of Tenures.

¶ *Melior entender*, &c. And theſe Inſtitutes have I collected and publiſhed to the end that theſe three Books of our Authoz may be better underſtood of the Studious Reader.

¶ *Ancient Livre des Tenures.* This Book may well be accounted ancient, foz it was compoſed in the reign of King Edward the third, (as Juſtice Fitzherbert ſaith) by a grave and diſcreet man. Fitz in his preface to his N.b.

Le tierce Livre.

De Parceners ſonlonque le courſe del Common Ley	Cap. 1.

De

Epilogus.

De Parceners solonque le custome Cap. 2.
De Joyntenants 3
De Tenants en Common 4
De Estates de terres & tenements sz Condition 5
De Descent que tollent entries 6
De Continual Clame 7
De Releases 8
De Confirmations 9
De Attornements 10
De Discontinuances 11
De Remitters 12
De Garranties. 13

Epilogus.

¶ *Jeo ne voile enprender ne presumer, &c.* Her observe the great modesty and mildness of our Author, which is worthy of imitation; for Nulla virtus, nulla scientia locum suum & dignitatem conservare potest sine modestia. And herein our Author followeth the example of Moses, who was a Judge, and the first writer of Law, for he was mitissimus omnium hominum qui fuerunt in terris, as the holy History of him.

¶ *Les arguments & les reasons del Ley*, &c. Ratio est animi Legis; for then are we said to know the law, when we apprehend the reason of the Law, that is, when we bring the reason of the Law so to our own reason, that we perfectly understand it as our own; and then and never before, we have such an excellent and inseparable property & ownership therein, as we can neither lose it, nor any man take it from us, & will direct us (the learning of the Law is so chained together) in many other Cases. But if by your studie and industry you make not the reason of the Law your own, it is not possible for you

¶ ET saches mon Fits, Que jeo ne voil' que tu croies, que tout ceo que jeo ay dit en les dits livres soit Ley, car jeo ne ceo voile enprender ne presumer sz. moy. Mes de tiels choses que ne sont pas Ley enquires, et apprendres de mes sages Masters apprises en la Ley. Mient meins coment que certaines choses, queux sont motes et specifies en les dit Livres, ne sont pas Ley, uncore tielx choses ferra toy plus apt et able de entender et apprender les arguments, & les reasons del ley, &c. Car per les arguments et les reasons en la Ley home pluis tost aviendra a le

AND know my Son, that I would not have thee believe, that all which I have said in these Books is Law, for I will not presume to take this upon me: but of those things that are not Law, inquire and learn of my wise Masters learned in the Law; notwithstanding albeit that certain things which are moved and specified in the said Books, are not altogether Law, yet such things shall make thee more apt, and able to understand and apprehend the Arguments and the reasons of the Law, *&c.* For by the Arguments and Reasons in the Law, a man more sooner shall come to the certain-

cer-

certaintie & a la connuſſance de la ley.

tie and knowledge of the law.

Lex plus laudatur quando ratione probatur.

long to retain it in your memorie. And well doth our Author couple Arguments and Reaſons together, Quia argumenta ignota & obſcura ad lucem rationis proferunt & reddunt ſplendida: and therefore argumentari & ratiocinari are many times taken for one: And that our Author may not ſpeak any thing without authority (which in theſe Inſtitutes we have as we take it manifeſted) his opinion herein alſo agreeth with that of the learned and reverend Chief Juſtice of the Court of Common Pleas, Sir Richard Haukford, (y) Home ne ſcavera de quel metal un campane eſt, ſi ne ſoit bien bate, ne le ley bien conuſans diſputation. And another ſaith, (*) Jeo aye diſpute ceſt matter pur la apprender la ley. So as one Author hath made a moſt excellent Epilogue or Concluſion, with a grave advice and counſel, together with the reaſon thereof; which all Students are to know and follow; and with Scire and ſequi. I will conclude our Authors Epilogue.

(y) 11 H. 4. 37.
(*) 41 E. 3. 21. Kirton. Vide Sect. 377.

¶ *Lex plus laudatur quando ratione probatur.*

This is the fourth time that our Author hath cited verſes. Vide Sect. 384. 443. 550.

When I had finiſhed this work of the firſt Part of the Inſtitutes, and looked back and conſidered the multitude of the concluſions in Law, the manifold diverſities betwen caſes & points of learning, the variety, almoſt infinite, of authorities, antient, conſtant, and modern, and withal their amiable and admirable conſent in ſo many ſucceſſions of ages, the many changes and alterations of the Common Law, and additions to the ſame, even ſince our Author wrote, by many Acts of Parliament; and that the like work of Inſtitutes had not been attempted by any of our profeſſion whom I might imitate; I thought it fake for me to follow the grave and prudent example of our worthy Author, not to take upon me, or preſume that the Reader ſhould think, that all that I have ſaid herein to be Law; yet this I may ſafely affirm, that there is nothing herein, but may either open ſome windows of the Law, to let in more light to the Student by diligent ſearch to ſee the ſecrets of the Law, or to move him to doubt, and withal to enable him to enquire and learn of the Sages, what the Law, together with the true reaſon thereof, in theſe caſes is: Or laſtly, upon conſideration had of our old Books, Laws, and Records (which are full of venerable dignity and antiquity) to find out where any alteration hath been, upon what ground the Law hath been ſince changed, knowing for certain, that the Law is unknown to him that knoweth not the reaſon thereof, and that the known certainty of the Law is the ſafety of all. I had once intended for the eaſe of our Student to have made a Table to theſe Inſtitutes, but when I conſidered that Tables and Abridgements are moſt profitable to them that make them, I have left that work to every ſtudious Reader, and for a farewel to our Juriſprudent, I wiſh unto him the gladſome light of Juriſprudence, the lovelineſs of Temperance, the ſtability of Fortitude, and the ſolidity of Juſtice.

FINIS.

To the READER.

COurteous Reader, *although I have ever observed true, what our honourable and grave Author intimates in the Conclusion of this Work,* That Tables and Abridgements are most profitable to the Makers, *which indeed first gave life to my endeavours in this Task, yet the confidence that they are not altogether unserviceable to others, together with the undeniable importunity of some especial friends, hath now wrested that to the publick view which was intended for private use. I hope the largeness of the Volume will Apologize for the length of the Table, and its Language speak somewhat in excuse of its prolixity. And because of the smalness of the Print, together with the much matter couched in every line, I have observed some Notes or Figures for your more speedy Direction, to what you are inquisitive. Divide each Page with your eye into three parts; and where you meet with this note (†) it directeth to the upper part, this note (*) to the middle part, and this (¶) inviteth you to the low part of the Page; so that you may easily at the first view find what you desire, without the tedious reading over the whole Page: and if you chance to miss what you seek for in the Comment, the Text will supply it unto you, or else the Printer shall be much to blame. Thus requesting you to weigh these my Labours in the even balance of your indifferent Judgement, I submit them to your censure, and take my leave.*

From the Inn. Temple.

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Where the writ ſhall be general, and the count ſpecial, 26 b. ¶. 53 a. †. 54 b. †. 334 b. †. 344 a. †.
Upon what plea to the diſability of the perſon the writ ſhall abate, and upon what not, 133 b. ¶. 134 a. †. 135 b. *.
Where an action well begun determineth in part by the act of Law, the writ as to the whole ſhall abate, and where not, 285 a. *. ¶.
Where the profeſſion of the Tenant or Defendant in Religion *pendente placito* ſhall not abate the writ, 248 b. ¶.
Where the deprivation of the Defendant ſhall abate the writ, *ſecus* of a Reſignation, *ibid.*

Where

Where the diſſeiſin of the tenant in a *Præcipe*, by the demand to the uſe of others, ſhall not abate the writ, *vide tit. Diſſeiſin.*

Where the death of one plaintiff in a *Quare Impedit* ſhall not abate the writ, *vide tit. Quare Impedit.*

Where an amerciament ſhall be due for the abatement of a writ, and where not, *vide tit. Amerciament.*

Where ſeveral writs of Cuſtomes and Services lye for the Deforcement of one and the ſame Service, 154 a. †.

Where two joyning in a grant of an annuity, the Grantee ſhall have ſeveral writs, and where but one, *vide tit. Annuity.*

In what places and Counties writs ought to be brought, *vide tit. Action.*

Writ *de ingreſſu ſine aſſenſu Capituli*, whence ſo called, and where it lyeth, 325 b. *.

The writ *ex gravi querela*, where it lyeth, 111 a. ¶.

De domo reparanda, where it lyeth, 56 b. †. 200 b. †.

For other Writs, *vide* their proper titles.

Dedit Deus his quoque finem.

Vera Effigies EDVARDI COKE
Equitis aurati nuper Capitalis
Iusticiarij ad placita coram Rege tenenda
assig- nati.

The First Part

OF THE

INSTITUTES

Of the LAWS of

ENGLAND.

OR,

A Commentary upon LITTLETON, not the name of the Author only, but of the LAW it self.

Juſtius MARTIAL. Stanley.

Quid te vana juvant miſeræ ludibria Chartæ?
Hoc lege, quod poſſit dicere jure meum eſt.

CICERO.

Major hæreditas venit unicuique noſtrum à Jure & Legibus, quàm à Parentibus.

Hæc ego grandævus poſui tibi, candide Lector.

Authore EDWARDO COKE Milite.

The Seventh Edition carefully Corrected.

LONDON,

Printed by John Streater, James Fletcher, and Henry Twyford, Aſſigns of Richard Atkins and Edward Atkins, Eſquires.

And are to be ſold by *George Sawbridge*, *John Place*, *John Bellinger*, *William Place*, *Thomas Baſſet*, *Robert Pawlet*, *Chriſtopher Wilkinſon*, *Thomas Dring*, *William Jacob*, *Allen Banks*, *Ch. Harper*, *John Amery*, *John Poole*, *John Leigh*, MDCLXX.

Cum Gratia & Privilegio Regiæ Majeſtatis.

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DEO, PATRIÆ, TIBI.

Proœmium.

OUR Author, a Genleman of an ancient and fair deſcended Family *de Littleton*, took his name of a Town ſo called, as that famous chief Juſtice Sir *John de Markham*, and divers of our Profeſſion, and others, have done.

The name and degree of our Author.

Thomas de Littleton, Lord of Frankley, had iſſue *Elizabeth* his onely child, and did bear the arms of his Anceſtors, *viz.* Argent, a Cheuron between three Eſcalop ſhels Sable. The bearing hereof is very ancient and honourable, for the Senators of Rome did wear bracelets of Eſcalop ſhels about their arms, and the Knights of the Honourable Order of S. *Michael* in France, do wear a collar of Gold in the form of Eſcalop ſhels at this day. Hereof much more might be ſaid, but it belongs unto others.

His Arms.

Inſtituted by *Lewis* the eleventh King of France, 9 E. 4. 1469.

With this *Elizabeth* married *Thomas Weſtcote* Eſquire, the Kings ſervant in Court, a Gentleman anciently deſcended, who bare Argent, a Bend between two Cotiſſes Sable, a Bordure engrayled Gules, Bezanty.

Thomas Weſtcote.

But ſhe being fair and of a noble ſpirit, and having large poſſeſſions and inheritance from her Anceſtors *de Littleton*, and from her mother the daughter and heir of *Richard de Quatermains*, and other her Anceſtors, (ready means in time to work her own deſire) reſolved to continue the honour of her name (as did the daughter and heir of *Charleton* with one of the ſons of *Knightly*, and divers others) and therefore prudently, whilſt it was in her own power, provided by *Weſtcotes* aſſent before marriage, that her iſſue inheritable ſhould be called by the name of *de Littleton*. Theſe two had iſſue four ſons, *Thomas*, *Nicholas*, *Edmund* and *Guy*, and four daughters.

Thomas the eldeſt was our Author, who bare his fathers Chriſtian name *Thomas*, and his mothers ſurname *de Littleton*, and the arms *de Littleton* alſo; and ſo doth his poſterity bear both Name and Arms to this day.

Our Auth r bare his Moters ſurname.

Camden in his *Britannia* ſaith thus; *Thomas Littleton*, alias *Weſtcote*, the famous Lawyer, to whoſe Treatiſe of Tenures the Students of the Common-Law are no leſs beholding, then the Civilians to *Juſtinians* Inſtitutes.

Camden Pſal. 92. 11. The juſt ſhall flouriſh like the Palm tree, and ſpread abroad like the Cedars in Libanus.

The dignity of this fair deſcended Family *de Littleton*, hath grown up together and ſpread it ſelf abroad by matches, with many other ancient and Honourable Families, to many worthy and fruitful branches, whoſe poſterity flouriſh at this day, and quartereth many fair Coats, and * enjoyeth fruitful andopule it inheritances thereby.

* The beſt kind of quartering of Arms.

He was of the Inner Temple, and read learnedly upon the Statute of *W.*2. *De donis conditionalibus*, which we have. He was afterward called *ad ſtatum & gradum Servientis ad Legem*, and was Steward of the Court of the Marſhalſey of the Kings houſhold, and for his worthineſs was made by King *H.*6. his Serjeant, and rode Juſtice of Aſſiſe the Northern Circuit, which places he held under King *E.* 4. until he in the ſixth year of his Reign conſtituted him one of the Judges of the Court of Common Pleas, and then he rode Northampton-ſhire Circuit. The ſame King in the 15. year of his Reign, with the Prince, and other Nobles and Gentlemen of ancient bloud, honoured him with Knighthood of the Bath.

Kings Serjeant. *Rot. Pat.* 33 *H.* 6. *part* 1. *M.* 16. *Mich.*34. *H.6. fol.*3 a.

Judge of the Common Pleas. *Rot. Pat.* 6 *E.*4. *Part* 1. *M.*15.

Knight of the Bath, 15 *E.* 4.

He compiled this Book when he was Judge, after the fourteenth year of the Reign of King *E.*4. but the certain time we cannot yet attain unto, but (as we conceive) it was not long before his death, becauſe it wanted his laſt hand, for that Tenant by Elegit, Statute Merchant, & Staple, were in the table of the firſt printed Book, and yet he never wrote of them.

When he wrote this Book. 14 *E.*4. *tit. Garranty* 5. *Litt. Sect.*692. 729. & 730.

Our Author in compoſing this Work had great furtherance, in that he flouriſhed in the time of many famous and expert Sages of the Law. *a* Sir *Richard Newton*, *b* Sir *John Priſot*, *c* Sir *Robert Danby*, *d* Sir *Thomas Brian*, *e* Sir *Pierce Ardern*, *f* Sir *Richard Choke*, *g* *Walter Moyle*, *h* *William Paſton*, *i* *Robert Danvers*, *k* *William Aſcough*, and other Juſtices of the Court of Common Pleas: And of the Kings Bench, *l* Sir *John June*, *m* Sir *John Hody*, *n* Sir *John Forteſcue*, *o* Sir *John Markham*, *p* Sir *Thomas Billing*, and other excellent men flouriſhed in his time.

The deceaſes of his Contemporaries.
a He died 27 *H.*6.
b He died 39 *H.*6.
c Died 11 *E.*4.
d Died 16 *H.*7.
e Died 7 *E.*4.
f Over-lived our Author.
g Survived him alſo.
h Died 23 *H.*6.
i Survived our Author.
k Died 33 *H.*6.
l Died 18 *H.*6.
m Died 20 *H.*6.
n Removed 1 *E.* 4.
o Removed 8 *E.* 4.
p Died 21 *E.*4.

And of worldly bleſſings I account it not the leaſt, that in the beginning of my ſtudy of the Laws of this Realm, the Courts of Juſtice, both of Equity and of Law, were furniſhed with men of excellent Judgment, Gravity, and Wiſdome; As in the Chancery, Sir *Nicholas Bacon*, and after him Sir *Thomas Bromley*. In the Exchequer Chamber, the Lord *Burghley*, Lord high Treaſurer of England, and Sir *Walter Mildmay* Chancellor of the Exchequer. In the Kings Bench, Sir *Chriſtopher Wray*, and after him Sir *John Popham*. In the Common Pleas, Sir *James Dyer*, and after him Sir *Edmund Anderſon*. In the Court of Exchequer, Sir *Edward Saunders*, after him Sir *John Jefferey*, and after him Sir *Roger Manwood*, men famous (amongſt many others) in their ſeveral places, and flouriſhed, and were all honoured and preferred by that thrice noble and vertuous Queen *Elizabeth* of ever bleſſed memory. Of theſe reverend Judges, and others their Aſſociates, I muſt ingeniouſly confeſs, that in her Reign I learned many things which in theſe Inſtitutes I have publiſhed: And of this Queen I may ſay, that as the Roſe is the queen of flowers, and ſmelleth more ſweetly when it is pluckt from the branch: ſo I may ſay and juſtifie, that ſhe by juſt deſert was the Queen of Queens, and of Kings alſo, for Religion, Piety, Magnanimity, and Juſtice; who now by remembrance thereof, ſince Almighty God gathered her to himſelf, is of greater honour and renown, then when ſhe was living in this world. You cannot queſtion what Roſe I mean; for take the Red or the White, ſhe was, not onely by Royal deſcent, and inherent Birthright, but by Roſial beauty alſo, heir to both.

Queen *Elizabeth.*

And though we wiſh by our labours (which are but *Cunabula Legis*, the cradles of the Law) Delight and Profit to all the Students of the Law, in their beginning of their ſtudy, (to whom the firſt part of the Inſtitutes is intended) yet principally to my loving friends, the Students of the honourable and worthy Societies of the Inner Temple, and Cliffords Inne, and of Lions Inne alſo, where I was ſometime Reader. And yet of them more particularly to ſuch as have been of that famous Univerſity of *Cambridge*, *Alma mea mater*. And to my much honoured and beloved Allies and Friends of the Counties of *Norfolk*, my dear and native Country; and to *Suffolk*, where I paſſed my middle age; and of *Buckinghamſhire*, where in my old age I live. In which Counties, we out of former Collections compiled theſe Inſtitutes. But now return we again to our Author.

Inner Temple
Cliffords Inne.
Lions Inne.

He married with *Johan* one of the daughters and coheirs of *William Burley* of *Broomſcroft* Caſtel in the County of *Salop*, a Gentleman of ancient deſcent, and bare the Arms of his Family, Argent, a Feſs Checkie Or and Azure, upon a Lion Rampant Sable, armed Gules. And by her had three ſons, Sir *William*, *Richard* the Lawyer, and *Thomas*.

His marriage.

His iſſue.

In his life time, he, as a loving Father and a wiſe man, provided matches for theſe three ſons, in vertuous and ancient Families, that is to ſay, for his Son Sir *William*, *Ellen* Daughter and Coheir of *Thomas Welſh* Eſquire, who by her had iſſue *Johan* his onely child, married to Sir *John Aſton* of *Tixall*, Knight: And for the ſecond wife of Sir *William*, *Mary* the Daughter of *William Whittington* Eſquire, whoſe poſterity in Worceſterſhire, flouriſh to this day. For *Richard Littleton* his ſecond Son, to whom he gave good poſſeſſions of inheritance, *Alice* Daughter and heir of *William Winsbury* of *Pilleton-Hall* in the County of *Stafford*, Eſquire, whoſe poſterity proſper in Staffordſhire to this day. And for *Thomas* his third Son, to whom he gave good poſſeſſions of inheritance, *Anne* Daughter and heir of *John Botreaux* Eſquire, whoſe poſterity in Shropſhire continue proſperouſly to this day. Thus advanced he his poſterity, and his poſterity by imitation of his Vertues, have honoured him.

The eſtabliſhment of his poſterity, by the matches of his three ſons, with Vertue and good Bloud.

He gave poſſeſſions of inheritance to his younger Sons, for their better advancement.

He made his laſt Will and Teſtament thee 22. day of *Auguſt*, in the 21. year of the Reign of King *Edward* the fourth, whereof he made his three Sons, a Parſon, a Vicar, & a ſervant of his, Executors; & conſtituted Superviſor thereof, his true & faithful Friend *John Alcock* Doctor of Law, of the famous Univerſity of *Cambridge*, then Biſhop of *Worceſter*, a man of ſingular Piety, Devotion, Chaſtity, Temperance, and holineſs of life, who amongſt other of his pious and Charitable works, founded Jeſus Colledge in *Cambridge*; a fit and a faſt Friend to our honourable & vertuous Judge.

His laſt Will.

His Executors
His Superviſor.

He left this life in his great and good age, on the 23. day of the moneth of *Auguſt*, in the ſaid 21. year of the Reign of King *Edward* the fourth: For it is obſerved for a ſpecial bleſſing of Almighty God, that few or none of that profeſſion die *Inteſtatus & improles*, without Will, and without Childs; which laſt Will was proved the 8. of *November* following, in the Prerogative Court of *Canterbury*, for that he had *Bona notabilia* in divers Dioceſſes. But yet our Author liveth ſtill *in ore omnium juris prudentium*.

His age.
His departure.

Littleton is named in 1 *H.*7. and in 21 *H.*7. Some do hold, that it is no

1 *H.*7. *fol.*27.
21 *H.*7. *fol.*32. *b.*

error

error either in the Reporter or Printer; but that it was *Richard* the ſon of our Author, who in thoſe days profeſſed the Law, and had read upon the Statute of *W.*2. *quia multi per malitiam*, and * unto whom his Father dedicated his Book; And this *Richard* died at Pilleton Hall in Staffordſhire, in 9 *H.*8.

W. 2. *cap.* 11.
* See *Littleton Sect.* 749.

His Sepulchre.

The body of our Author is honourably interred in the Cathedral Church of Worceſter, under a fair Tomb of Marble, with his Statue or portraiture upon it, together with his own match, and the matches of ſome of his Anceſtors, and with a memorial of his principal titles, and out of the mouth of his ſtatute proceedeth this prayer, *Fili Dei miſerere mei*, which he himſelf cauſed to be made and finiſhed in his life time, and remaineth to this day. His wife *Johan*, Lady *Littleton*, ſurvived him, and left a great inheritance of her Father, and *Ellen* her Mother, daughter and heir of *John Grendon* Eſquire, and other her Anceſtors, to Sir *William Littleton* her ſon.

When this Work was publiſhed.

This Work was not publiſhed in print, either by our Author himſelf, or *Richard* his ſon, or any other, until after the deceaſes both of our Author, and of *Richard* his ſon. For I find it not cited in any Book or Report, before Sir *Anthony Fitzherbert* cited him in his *Natura Brevium*; who publiſhed that Book of his *Natura Brevium* in 26 *H.*8. Which Work of our Author, in reſpect of the excellency thereof, by all probability ſhould have been cited in the Reports of the Reigns of *E.* 5. *R.* 3. *H.* 7. or *H.* 8. or by *S. Jermyn* in his Book of the Doctor and Student, which he publiſhed in the three and twentieth year of *H.*8. if in thoſe days our Authors Book had been printed. And yet you ſhall obſerve, That Time doth ever give greater authority to Works and Writings that are of great and profound learning, then at the firſt they had. The firſt impreſſion that I find of our Authors Book was at Roan in France by *William de Tailier* (for that it was written in French) *Ad inſtantiam Richardi Pinſon*, at the inſtance of *Richard Pinſon* the Printer of King *H.*8. before the ſaid Book of *Natura Brevium* was publiſhed; and therefore upon theſe and other things that we have ſeen, we are of opinion, that it was firſt printed about the four & twentieth year of the Reign of King *H.*8. ſince which time he had been commonly cited, and (as he deſerves) more & more highly eſteemed.

F. N. B. 312. c.

Nota.

When this Work was firſt imprinted.

His Picture.

He that is deſirous to ſee his Picture, may in the Churches of Frankley and Hales Owen, ſee the grave and reverend countenance of our Author, the outward man, but he hath left this Book, as a figure of that higher and nobler part, that is, of the excellent and rare endowments of his mind, eſpecially in the profound knowledge of the fundamentall Laws of this Realm. He that diligently reads this his excellent Work, ſhall behold the child and figure of his mind, which the more often he beholds in the viſial line, and well obſerves him, the more ſhall he juſtly admire the judgment of our Author, and increaſe his own. This onely is deſired, that he had written of other parts of the Law, and ſpecially of the rules of good pleading (the heart-ſtring of the Common Law) wherein he excelled: for of him might the ſaying of our Engliſh Poet be verified.

The figure of his Mind.

Thereto he could indite and maken a thing,
There was no Wight could pinch at his writing.

Chaucer.

So

So far from exception, as none could pinch at it. This skill of good pleading, he highly in this Work commended to his Son, and under his name to all other Students ſons of his Law. He was learned alſo in that Art, which is ſo neceſſary to a compleat Lawyer, I mean of Logick, as you ſhall perceive by reading of theſe Inſtitutes, wherein are obſerved his Syllogiſmes, Inductions, and other Arguments; and his Definitions, Deſcriptions, Diviſions, Etymologies, Derivations, Significations, and the like. Certain it it; that when a great learned man (who is long in making) dieth, much learning dieth with him. *Seneca.*

Good pleading.

Logick.

That which we have formerly written, that this Book is the ornament of the Common Law, and the moſt perfect and abſolute Work that ever was written in any humane Science; and in another place, that which I affirmed and took upon me to maintain againſt all oppoſites, whatſoever, that it is a work of as abſolute perfection in its kind, and as free from error, as any Book that I have known to be written of any humane learning, ſhall to the diligent and obſerving Reader of theſe Inſtitutes be made manifeſt, and we by them (which is but a Commentary upon him) be deemed to have fully ſatisfyed that, which we in former times have ſo confidently affirmed and aſſumed. His greateſt commendation, becauſe it is of greateſt profit to us, is, that by this excellent Work, which he had ſtudiouſly learned of others, he faithfully taught all the Profeſſors of the Law in ſucceeding ages. The victory is not great to overthrow his oppoſites, for there never was any learned man in the Law, that underſtood our Author, but concurred with me in his commendation: *Habet enim juſtam venerationem quicquid excellit*; For whatſoever excelleth hath juſt honour due to it. Such as in words have endeavoured to offer him diſgrace, never underſtood him, and therefore we leave them in their ignorance, and wiſh that by theſe our Labours they may know the truth and be converted. But herein we will proceed no further: For, *Stultum eſt abſurdas opiniones accuratius refellere.* It is meer folly to confute abſurd opinions with too much curioſity.. *Ariſtotle.*

The commendation of his Work. *Lib. 2. fol. 67. Epiſt. 10. l. 10.*

Cicero.

And albeit our Author in his three Books cites not many Authorities, yet he holdeth no opinion in any of them, but is proved and approved by theſe two faithfull witneſſes in matter of Law, Authority and Reaſon. Certain it is, when he raiſeth any queſtion, and ſheweth the Reaſon on both ſides, the latter opinion is his own and is conſonant to Law. We have known many of his Caſes drawn in queſtion, but never could find any judgement given againſt any of them, which we cannot affirm of any other Book or Edition of our Law. In the reign of our late Sovereigne Lord King *James* of famous and ever bleſſed memory, it came in queſtion upon a demurrer in Law, whether the releaſe to one treſpaſſer ſhould be available or no to his companion, Sir *Henry Hobart* that honorable Judge, and great Sage of the Law, and thoſe reverend and learned Judges, *Warburton*, *Winch*, and *Nicols*, his companions gave judgement according to the opinion of our Author, and openly ſaid, That they owed ſo great a reverence to *Littleton*, as they would not have his Caſe diſputed or queſtioned: and the like you may find in this part of the

Note.

Mich. 3. Jac. in Communi Banc. inter Cock and Ilnours.

the Inſtitutes. Thus much (though not ſo much as his due) have we ſpoken of him; both to ſet out his Life, becauſe he is our Authour, and for the imitation of him by others of our Profeſſion.

What is endeavoured by theſe Inſtitutes.

We have in theſe Inſtitutes endeavoured to open the true ſenſe of every of his particular Caſes, and the extent of every of the ſame, either in expreſs words, or by implication, and where any of them are altered by any latter Act of Parliament to obſerve the ſame, and wherein the alteration conſiſteth: certain it is, that there is never a period, nor (for the moſt part) a word, nor an &c. but affordeth excellent matter of learning. But the Module of a Preface cannot expreſs the obſervations that are made in this Work, of the deep Judgement, and notable Invention of our Author. We have by compariſon of the late and modern Impreſſions with the original print, vindicated our Author from two injuries; Firſt, from divers corruptions in the late and modern prints, and reſtored our Author to his own: Secondly, from all additions and encroachments upon him, that nothing might appear in his Work but his own.

The benefit of theſe Inſtitutes.

Our hope is, that the young Student, who heretofore meeting at the firſt and wraſtling with as difficult terms and matter, as in many years after, was at the firſt diſcouraged as many have been, may by reading theſe Inſtitutes, have the difficulty & darkneſs both of the Matter, and of the Terms and Words of Art in the beginning of his ſtudy facilitated and explained unto him, to the end he may proceed in his ſtudy cheerfully and with delight; and therefore I have termed them Inſtitutes, becauſe my deſire is, they ſhould inſtitute and inſtruct the ſtudious, and guide him in a ready way to the knowledge of the Nationall Laws of *England*.

Wherefore called Inſtitutes.

Wherefore publiſhed in Engliſh.

This part we have (and not without Preſident) publiſhed in Engliſh, for that they are an introduction to the knowledge of the Nationall Laws of the Realm; a Work neceſſary, and yet heretofore not undertaken by any, albeit in all other Profeſſions there are the like. We have left our Author to ſpeak his own language, and have tranſlated him into Engliſh to the end that any of the Nobility, or Gentry of this Realm, or of any other eſtate or profeſſion whatſoever, that will be pleaſed to read him and theſe Inſtitutes, may underſtand the language, wherein they are written.

I cannot conjecture that the generall communicating of theſe Laws in the Engliſh tongue can work any inconvenience, but introduce great profit, ſeeing that *Ignorantia Juris non excuſat*, Ignorance of the Law excuſeth not. And herein I am juſtified by the wiſdome of a Parliament; the words whereof be, *That the Laws and Cuſtomes of this Realm the rather ſhould be reaſonably perceived and known, and better underſtood by the Tongue uſed in this Realm, and by ſo much every man might the better govern himſelf without offending of the Law, and the better keep, ſave, and defend his heritage and poſſeſſions. And in divers Regions and Countries, where the King, the Nobles, and other of the ſaid Realm have been, good governance and full right is done to every man, becauſe that the Laws and Cuſtomes be learned and uſed in the Tongue of the Countrey:* as more at large by the ſaid Act, and the purview thereof may appear: *Et neminem oportet eſſe ſapientiorem Legibus*, No man ought to be wiſer than the Law.

Regula.

36 E. 3. *cap.* 5.

Regula.

And

And true it is that our Books of Reports and Statutes, in ancient times were written in ſuch French as in thoſe times was commonly ſpoken and written by the French themſelves. But this kind of French that our Author hath uſed, is moſt commonly written and read, and very rarely ſpoken, and therefore cannot be either pure, or well pronounced. Yet the change thereof (having been ſo long accuſtomed) ſhould be without any profit, but not without great danger and difficulty: for ſo many ancient Terms and words drawn from that legal French, are grown to be *Vocabula artis*, Vocables of Art, ſo apt and ſignificant to expreſs the true ſenſe of the Laws, and are ſo woven in the Laws themſelves, as it is in a manner impoſſible to change them, neither ought legal terms to be changed.

Our Authors kinde of French.

36 E. 3. ubi ſupr.

In School Divinity, and amongſt the Gloſſographers and Interpreters of the Civil and Canon Laws, in Logick, and in other liberal Sciences, you ſhall meet with a whole Army of words, which cannot defend themſelves *in Bello Grammaticali*, in the Grammatical War, and yet are more ſignificant, compendious, and effectual to expreſs the true ſenſe of the matter, then if they were expreſſed in pure Latine.

This Work we have called The firſt part of the Inſtitutes, for two cauſes: Firſt, for that our Author is the firſt Book that our Student taketh in hand. Secondly, for that there are ſome other parts of Inſtitutes not yet publiſhed, (*viz.*) The ſecond part being a Commentary upon the Statute of *Magna Charta*, *Weſtm.* 1. and other old Statutes. The third Part treateth of Criminal cauſes and Pleas of the Crown: which three parts we have by the goodneſs of Almighty God, already finiſhed. The fourth Part we have purpoſed to be of the Juriſdiction of Courts; but hereof we have onely collected ſome materials towards the raiſing of ſo great and honourable a Building. We have by the goodneſs and aſſiſtance of Almighty God brought this twelfth Work to an end: in the eleven Books of our *Reports* we have related the opinions and judgments of others; but herein we have ſet down our own.

Wherefore called the firſt part.

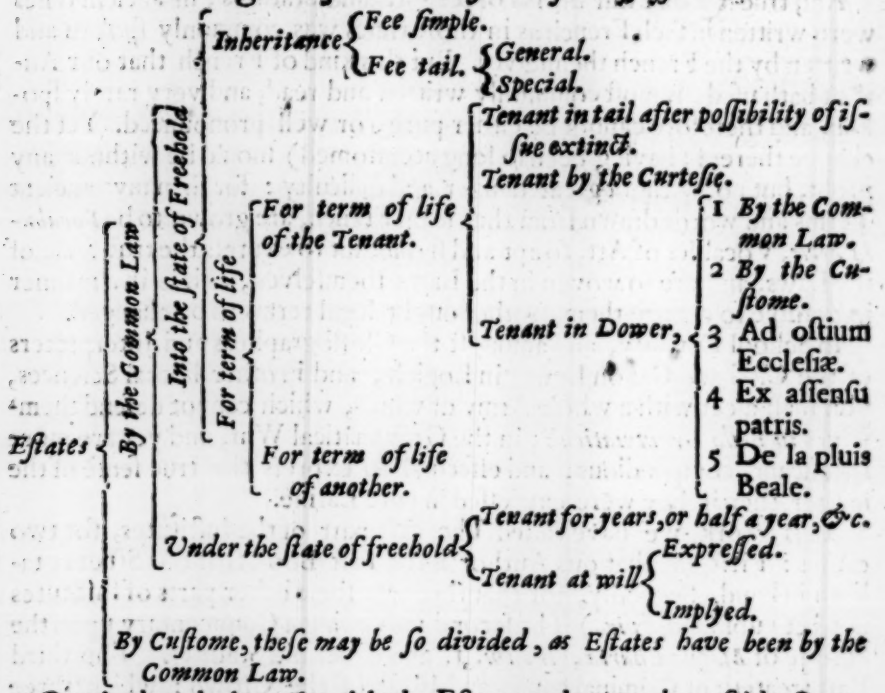
Before I entred into any of theſe Parts of our Inſtitutes, I acknowledging mine own weakneſs and want of judgment to undertake ſo great Works, directed my humble Suit and Prayer to the Author of all Goodneſs and Wiſdome, out of the Book of *Wiſdome*; *Pater & Deus miſericordiæ, da mihi ſedium tuarum aſſiſtricem ſapientiam, mitte eam de Cœlis ſanctis tuis & a ſede magnitudinis tuæ, ut mecum ſit & mecum laboret, ut ſciam quid acceptum ſit apud te*; Oh Father and God of mercy, give me wiſdome, the Aſſiſtant of thy ſeats; Oh, ſend her out of thy holy Heavens, and from the ſeat of thy Greatneſs, that ſhe may be preſent with me, and labour with me, that I may know what is pleaſing unto thee. *Amen.*

Lib. Sap. cap. 9. Verſ. 4, 10.

Our Author hath divided his whole Work into three Books: In his firſt he hath divided Eſtates in Lands and Tenements, in this manner; For *Res per diviſionem melius aperiuntur.*

Bracton.

A Figure of the diviſion of Poſſeſſions.



Our Author dealt onely with the Eſtates and terms aboveſaid; Somewhat We ſhall ſpeak of Eſtates by force of certain Statutes, as of Statute Merchant, Statute Staple, and *Elegit*, (whereof our Author intended to have written) and likewiſe to Executors to whom lands are deviſed for payment of debts, and the like.

Regula. Inciſile eſt, parte una perſpecta, tota re non cognita, de ea judicare.

I ſhall deſire, that the learned Reader will not conceive any opinion againſt any part of this painful and large Volume, until he ſhall have adviſedly read over the whole, and diligently ſearched out, and well conſidered of the ſeveral Authorities, Proofs, and Reaſons which we have cited and ſet down for warrant and confirmation of our opinions throughout this whole Work.

Mine advice to the Student is, That before he read any part of our Commentaries upon any Section, that firſt he read again and again our Author himſelf in that Section, and do his beſt endeavours, firſt of himſelf, and then by conference with others, (which is the life of Study) to underſtand it, and then to read our Commentary thereupon, and no more at any one time then he is able with delight to bear away, and after to meditate thereon, which is the life of reading. But of this Argument we have for the better direction of our Student in his Study, ſpoken in our Epiſtle to our Firſt Book of *Reports*.

And albeit the Reader ſhall not at any one day (do what he can) reach to the meaning of our Author, or of our Commentaries, yet let him no way diſcourage himſelf, but proceed; for on ſome other day, in ſome other place, that doubt will be cleared. Our labours herein are drawn out to this great Volume, for that our Author is twice repeated, once in French, and again in Engliſh.

J

The true portraiture of Iudge Littleton the Famous English Lawyer

THE FIRST PART Of the INSTITUTES Of the LAWES of ENGLAND.

CHAP. I. *Fee ſimple.* Sect. 1.

¶ TEnant in fee ſimple eſt celuy q̄ ad t̄res ou tenements a tener a luy & a ſes heires a touts iours. Et eſt appel en Latin, Feodum ſimplex, quia feodum idem eſt quod hæreditas, & ſimplex idem eſt quod legitimum vel purum, & ſic feodum ſimplex idem eſt quod hæreditas legitima vel hæreditas pura. Car ſi home voile purchaſer terres ou Tenements en Fee ſimple, il covient de aver ceux parolx en ſon purchaſe, A aver & tener a luy & a ſes h̄es: Car ceux parolx (ſes heires) font leſtate denheritance. Car ſi home

TEnant in Fee ſimple is he which hath Lands or Tenements to hold to him and his heirs for ever. And it is called in Latine, *Feodum ſimplex*, for *Feodum* is the ſame that Inheritance is, and *ſimplex* is as much to ſay, as lawful or pure. And ſo *feodum ſimplex* ſignifies a lawful or pure inheritance. For if a man would purchaſe lands or tenements in fee ſimple, it behoveth him to have theſe words in his purchaſe, To have and to hold to him and to his Heires: for theſe words (his Heires) make the Eſtate of the Inheritance. For if a man pur-

¶ *Tenant.*

In Latine Tenens is derived of the verb Teneo, and hath in the Law five ſignifications, 1. It ſignifies the eſtate of the Land, as when the Tenant in a Præcipe of land pleads, Quod non tenet, &c. this is as much as to ſay, That he hath not ſeiſin of the Freehold of the Land in queſtion. And in this ſenſe doth our Author take it in this place: & therefore he ſaith, tenant in fee ſimple is he which hath lands to hold to him & his heires. 2. It ſignifieth the Tenure or the ſervice whereby the lands and tenements have been holden; and in this ſenſe it is ſaid in the Writs of right, Quæ clamat tenere de te per liberum ſervitium, &c. And in this ſignification he is called a Tenant or holder, becauſe all the lands & tenements in England in the hands of ſubjects are holden mediately or immediately of

Vide Sect. 85.

8 H. 7. 14. 17 E. 3. 35. 24 E. 3. 65. 66. 44 E. 3. 5. 48 E. 3. 9.

of the King. For in the law of England we have not properly, Allodium, That is any Subjects Land that is not holden, unleſs you will take Allodium for Ex ſolido, as it is often taken in the book of Domeſday: and tenants in Fee ſimple are there called Alodarii or Aloarii. And he is called a Tenant, becauſe he holdeth of ſome ſuperior Lord by ſome ſervice. And therefore the King in this ſenſe cannot be ſaid to be a Tenant, becauſe he hath no ſuperior but God Almighty; Prædium domini regis eſt directum dominium, cujus nullus Author eſt niſi Deus. And as Bracton ſaith, Omnis quidem ſub eo, & ipſe ſub nullo, niſi tantum ſub Deo. The poſſeſſions of the King are called Sacra patrimonia, and Dominica Coronæ Regis. But though a Subject hath not properly Directum, yet hath he Utile dominium. Of theſe Tenants our Author ſpeaketh in his ſecond Book. Alſo Tenere ſignifieth performance, as in the Writ of Covenant, Quod teneat conventionem, that is, That he hold or perform his Covenant. And likewiſe it ſignifieth to be bound as it is ſaid in Every common Obligation, teneri & firmiter obligari. Laſtly, It ſignifieth to deem or judge, as in 38 E. 3. c. 4. It ſhall be holden for none (that is) judged or deemed for none, and ſo we commonly ſay, it is holden in our books. And theſe ſeveral ſignifications do properly belong to our Tenant in Fee ſimple. For he hath the eſtate of the Land, he holdeth the land of ſome ſuperiour Lord, and is to perform the ſervices due, and thereunto he is bounden by doom and judgment of Law. Of the ſeveral eſtates of Land our Author treateth in his firſt book and beginneth with Fee ſimple, becauſe all other eſtates and intereſts are derived out of the ſame.

Mir. des Juſtic. c. 1. ſect. 3. Cuſtomes de Normandy, cap. 28.

L'eſt. de 16 R. 2. cap. 5. 14. El. Dy. 313. 2. Lib. 1. 47. in Alton Woods Caſe.

Bract. lib. 1. cap. 8.

purchaſe terres per ceux paroles, A aver & tener a luy & touts jours: ou p̄ tiels parols, A aver & tener a luy & a ſes aſſignes a touts jours: en ceux deux caſes il ny ad eſtate forſque pur terme de vie, pur ceo que il fault ceux pols (ſes heires) les queux paroles tantſolement font leſſate denheritance en touts feoffments & Grants,

chaſe Lands by theſe words, To have and to hold to him for ever; or by theſe words, To have and to hold to him and his aſſignes for ever: in theſe two caſes he hath but an eſtate for term of life, for that there lack theſe words (his Heires) which words onely make an Eſtate of Inheritance in all Feoffments and Grants.

¶ *Fee ſimple*, Fee cometh of the French Fief, (i) prædium beneficiarium, and legally ſignifieth Inheritance, as our Author himſelf hereafter expounded it. And Simple is added for that it is deſcendible to his heirs generally, that is, ſimply, without reſtraint to the heirs of his body, or the like. Feodum eſt quod quis tenet ex quacunque cauſa, ſive ſit tenementum, ſive redditus, &c. In Domeſday it is called Feudum. (a) Of Fee ſimple, it is commonly holden, that there be three kinds, viz. Fee ſimple abſolute, Fee ſimple conditional, and Fee ſimple qualified, or a baſe fee. But the more genuine and apt diviſion, were to divide Fee, that is, Inheritance, into three parts, viz. Simple or abſolute, Conditional, and qualified or baſe. For this word (Simple) properly excludeth both conditions and limitations, that defeat or abridg the fee. * Hereby it appeareth, that Fee in our legal underſtanding ſignifieth, that the land belongs to us and our heirs, in reſpect wherof the owner is ſaid to be ſeiſed in fee, and in this ſenſe the King is ſaid to be ſeiſed in fee. (b) It is alſo taken, as it is holden of another by ſervice, and that belongeth only to the Subject; Item dicitur feodum alio modo ejus qui alium feoffat & qd' quis tenet ab alio, ut ſi ſit qui dicat, talis tenet de me tot feoda per ſervitium militare. And Fleta ſaith, Poterit unus tenere in feodo quoad ſervitia, ſicut dominus capitalis, & non in Dominico, alius in feodo & dominico, & non in ſervitio, ſicut libere tenens alicujus. (c) And therefore if a ſtranger claim a Seigniory, and diſtreyn, and avow for the ſervice, the Tenant may plead, That the tenancy is extra feodum, &c. of him (that is) out of the Seigniory, or not holden of him that claimeth it, but he cannot plead Hors de ſon fee, unleſs he take the tenancy, that is, the ſtate of the Land upon him. Of fee in the firſt ſenſe our Author treateth in this firſt Book; and as it is taken in the ſecond ſenſe, in his ſecond book: and of the third you ſhall read in our Author, Sect. 13. 643, 644, 645. and plentifully in our books quoted in the margent.

Brit. fo. 83. 207. 208. Fleta lib. 5. cap. 5. & lib. 3. cap. 8. Bract. lib. 4. 263. Domeſday. Mir. des Juſt. c. 2. Sect. 15. 17. Bract. l. 2. c. 5, 6, 7. Brit. cap. 34. fol. 89. Flet. lib. 3. cap. 2. 8. & 9. & lib. 5. cap. 5.

(a) Bract. f. 263. & 207. Pl. Com. in Walſ. caſ. 7. H. 4. 46. 8 H. 4. 15. 18 H. 8. 3. b. 27 Aſſ. 33. 18. Aſſ. 5. 18 E. 3. 46. 24 E. 3. 28 9 E. 4. 18 16 H. 4. 4. 10 E. 3. Account 56. 22 R. 2. Diſ. 50. 12. E. 4 3. 15 E. 4. 8. Dy. 8. El 252, 253. 12 H. 8. 8. 4 H. 7. 2. The caſe of a perſon which hath a qualified fee. See in the title of Deſc.

(*) Vide Sect. 4.

(b) Bract. l. 4. f. 263. Flet. l. 5. c. 5. Brit. fo. 205. 207.

(c) 2. Aſſ. p. 4. 12. Aſſ 38. 12 E. 3 tit. Hors de ſon fee. 28. 28. Aſſ. 41. 7 H. 4. 30. 2 H. 6. 1.

¶ *Terres ou Tenements.* Here is to be obſerved, That a man may have a Fee ſimple in three kinds of hereditaments, viz. Real, Perſonal, and Mixt: Real, as Lands and Tenements, whereof our Author here ſpeaketh: Perſonal, King Edward the firſt in the thirteenth year of his Reign, Conceſſit Edmundo fratri ſuo chariſſimo, quod ipſe & hæredes ſui habeant ad requiſitionem ſuam in Cancellaria noſtra & hæredum noſtrorum Juſti-

Rot. par. 13 E. 1.

ciarios

Feodum is whatever is inherittable whether Tenements or hereditam[illegible]
Vid. this agreed on Judge Coke much Blackſtone

ciarios ad placita foreſtarum quas idem Frater noſter habet ex dono domini Regis Henrici patris noſtri ſecundum aſſiſ. foreſtæ tenend. &c. In this caſe the grantee and his heirs had a perſonall inheritance in making of a requeſt to have Letters patents of Commiſſion to have Juſtices aſſigned to him to hear and determine of the pleas of the forreſts, which concerneth neither lands nor tenements. And ſo it is if an Annuity be granted to a man and his heirs, it is a fee ſimple perſonal, & ſic de ſimilibus. And laſtly, hereditaments mixt both of the realty and perſonalty. As the Abbot of Whitby in the County of York, having a forreſt of the gift of William of Percey founder of that Abby, and by the Charters of King John and of other his progenitors, King Henry the third did grant Abbati & conventui de Whitbye, quod ipſi & eorum ſucceſſores imperpetuum habeant viridarios ſuos proprios de libertate ſua de Whitbye eligend. de cætero in pleno com. Eborum, prout moris eſt, ad reſponſiones & præſentationes faciend. de tranſgreſſionibus quas amodo fieri continget de venatione infra metas foreſtæ ſuæ de Whitbye, quam habent ex donatione Will. de Percy, & Alani de Percey filii ejus, & redditione & conceſſione domini Johan. quondam regis Angliæ patris noſtri, & confirmatione noſtra, coram Juſticiariis noſtris itinerantibus ad placita foreſtæ in partibus illis & non alibi, ſicut viridarii foreſtæ noſtræ hujuſmodi reſponſiones & præſentationes facere debent, & conſueverunt. Et ſi contingat aliquos forinſecos, qui non ſunt de libertate prædictorum Abbatis & conventus, tranſgreſſionem facere de venatione infra metas foreſtæ prædictæ, quos prædicti viridarii attachiare non poſſunt: Volumus & concedimus pro nobis & hæredibus noſtris, quod hujuſmodi tranſgreſſores per Juſticiarios foreſtæ noſtræ ultra Trentam attachientur ad præſentationem viridariorum prædict. ad reſpondendum inde coram Juſticiariis noſtris itinerantibus ad placita foreſtæ noſtræ in partibus illis, cum ibid. ad placitandum venerint, prout ſecundum aſſiſam & conſuetudinem foreſtæ noſtræ fuerit faciend. Which Charter was pleaded upon the Claim made by the Abbot of Whitbye before Willoughby, Hungerford and Hanbury, Juſtices in Eire in the forreſt of Pickering, which Eire began Anno 8 E. 3. And theſe before them were allowed. And when the King createth an Earle of ſuch a County or other place, to hold that dignity to him and his heirs, this dignity is perſonal, and alſo concerneth lands and tenements. But of this matter more ſhall be ſaid in the next Chapter, Sect. 14, & 15.

Ro. Par. an. 47 H. 3. Itin. Pickering 8 E. 3. Ro. 42.

¶ *Et eſt appel en Latine feodum ſimplex, quia feod. idem eſt quod hæreditas.* Here Littleton himſelf teacheth the ſignification of Feodum, according to that which hath been ſaid, which onely is to be applied to fee ſimple pure and abſolute. And this and all his other interpretations of words and Etymologies throughout all his three books (wherein the ſtudious Reader will obſerve many) are perſpicuous, and ever per notiora, & nunquam ignotum per ignotius, and are moſt neceſſary; for ignoratis terminis ignoratur & ars.

Bract. lib. 4. cap. 9. fo. 263. Brit. cap. 32. & 79. For interpretation of words and Etymologies, Vide Sect. 9. 18. 95. 116. 119. 135. 154. 164. 174. 184. 186. 194. 204. 234. 267. 268. 332. 337. 424. 520. 592. 643. 689. 733.

¶ *Simplex idem eſt quod legitimum vel purum.* Hereof he treateth onely in this place. And Littleton ſaith well, that Simplex idem eſt quod purum. Simplex enim dicitur, quia ſine plicis; & purum dicitur, quod eſt merum & ſolum ſine additione. Simplex donatio & pura eſt ubi nulla addita eſt conditio ſive modus; ſimplex enim datur quod nullo additamento datur.

Bract. lib. 2. cap. 39. fol. 92. 62. b. lib. 4. cap. 28. Fleta lib. 3. cap. 8. Bract. lib. 2. ca. 5, &c. Brit. cap. 34.

¶ *Hæreditas legitima vel hæreditas pura.* And therefore it is well ſaid, quod donationum alia ſimplex & pura, quæ nullo jure civili vel naturali cogente, nullo præcedente metu vel interveniente, ex mera gratuitaque libertate donantis procedit, & ubi nullo caſu velit donator ad ſe reverti quod dedit; alia ſub modo, conditione, vel ob cauſam, in quibus caſibus non propriè ſit donatio, cum donator id ad ſe reverti velit, ſed quædam potius feodalis dimiſſio: alia abſoluta & larga; alia ſtricta & coarctata, ſicut certis hæredibus quibuſdam à ſucceſſoribus excluſis, &c. And therefore ſaying Fee ſimple is hæreditas legitima vel pura, it plainly confirmeth that the diviſion of fee is by his authority rather to be divided, as is aforeſaid, then fee ſimple. And he ſaith well in the diſjunctive, legitima vel pura, for every fee ſimple is not legitimum. For a diſſeiſor, abator, intruder, uſurper, &c. have a fee ſimple, but it is not a lawfull fee. So as every man that hath a fee ſimple hath it either by right or by wrong. If by right, then he hath it either by purchaſe or diſcent. If by wrong, then either by diſſeiſin, intruſion, abatement, uſurpation, &c. In this Chapter he treateth onely of a lawfull fee ſimple, and divideth the ſame as is aforeſaid.

Fleta lib. 3. ca. 2.

¶ *Car ſi home purchaſe.* Perſons capable of purchaſe are of two ſorts; perſons natural, created of God, as I. S. I. N. &c. and perſons incorporate or politique, created by the policy of man, (and therefore they are called bodies politique:) and theſe be of two ſorts, viz. either ſole, or aggregate of many: again aggregate of many, either of all perſons capable, or of one perſon capable, and the reſt incapable or dead in law, as in the Chapter of Diſcontinuance, Sect. 57. ſhall be ſhewed. Some men have capacity to purchaſe, but not ability to hold. Some capacity to purchaſe, and ability to hold, or not to hold, at the election of them or others. Some capacity to take and to hold. Some neither capacity to take nor to hold. And ſome ſpecially diſabled to take ſome particular thing.

Vide Sect. 57. Who have ability to grant. Perſons capable of purchaſe.

If an alien Chriſtian or infidel purchaſe houſes, lands, tenements, or hereditaments, to him

11 Eliz. Diet 283. 11 H. 4. 20. & 26. 7 E. 4. 29.

and his heirs, albeit he can have no heirs, yet he is of capacity to take a fee ſimple, but not to hold: For upon an office found the King ſhall have it by his prerogative, of whomſoever the land is holden. And ſo it is if the Alien doth purchaſe land and dy, the Law doth caſt the freehold and inheritance upon the King. If an Alien purchaſe any eſtate of freehold in houſes, lands, tenements, or hereditaments, the King upon office found ſhall have them. If an Alien be made Denizen, and purchaſe lands, and dy without iſſue, the Lord of the fee ſhall have the eſcheat, and not the King. But as to a leaſe for years, there is a diverſity betweene a leaſe for years of a houſe for the habitation of a Merchant ſtranger being an Alien, whoſe King is in league with ours, and a leaſe for years of lands, meadows, paſtures, woods, and the like. For if he take a leaſe for years of lands, meadows, &c. upon office found the King ſhall have it: But of a houſe for habitation he may take a leaſe for years as incident to Commercery, for without habitation he cannot merchandize or trade. But if he depart, or relinquiſh the Realm, the King ſhall have the leaſe. So it is if he dy poſſeſſed thereof, neither his executors or adminiſtrators ſhall have it, but the King: for he had it onely for habitation as neceſſary to his trade or traffique, and not for the benefit of his executor or adminiſtrator. But if the Alien be no Merchant, then the King ſhall have the leaſe for years, albeit it were for his habitation: and ſo it is if he be an Alien enemy. And all this was ſo reſolved by the Judges aſſembled together for that purpoſe in the caſe of Sir James Croſts, Paſch. 29. of the reign of Queen Elizabeth. Alſo if a man commit felony, and after purchaſe lands, and after is attainted, he hath capacity to purchaſe, but not to hold it, for in that caſe the Lord of the fee ſhall have the eſcheat. And if a man be attainted of felony, yet he hath capacity to purchaſe to him and to his heirs, albeit he can have no heir, but he cannot hold it, for in that caſe the King ſhall have it by his prerogative, and not the Lord of the fee; for a man attainted hath no capacity to purchaſe (being a man civiliter mortuus) but onely for the benefit of the King, no more then the Alienæ hath. If any ſole Corporation, or aggregate of many, either Eccleſiaſtical or temporal, (for the words of the ſtatute be, Si quis religioſus vel alius) purchaſe lands or tenements in fee, they have capacity to take, but not to retain, (unleſs they have a ſufficient licence in that behalf) for within the year after the alienation the next Lord of the fee may enter; and if he do not, then the next immediate Lord from time to time to have half a year; and for default of all the meſne Lords, then the King, to have the land ſo alienedfor ever: which is to be underſtood of ſuch inheritance as may be holden. But of ſuch inheritances as are not holden, as Villeins, rent charges, commons, and the like, the King ſhall have them preſently, by a favorable interpretation of the ſtatute. An Annuity granted to them is not mortmain, becauſe it chargeth the perſon onely. Some have ſaid that it is called mortmain Manus mortua, quia poſſeſſio eorum eſt immortalis, manus pro poſſeſſione, & mortua pro immortali; and the rather, for that by the Laws and ſtatutes of the Realm, all Eccleſiaſtical perſons are reſtrained to alien. Others ſay it is called manus mortua per Antiphraſin, becauſe bodies politique and corporate never die. Others ſay that it is called Mortmain by reſemblance to the holding of a mans hand that is ready to die, for that he then holdeth he letteth not go till he be dead. Theſe and ſuch others are framed out of wit and invention: but the true cauſe of the name, and the meaning thereof, was taken from the effects, as it is expreſſed in the ſtatute it ſelf; per quod quæ ſervitia ex hujuſmodi feodis debentur, & quæ ad defenſionem regni ab initio proviſa fuerunt, indebite ſubtrahuntur, & capitales domini eſchaetas ſuas amittunt; ſo as the lands were ſaid to come to dead hands as to the Lords, for that by alienation in mortmain they loſt wholly their eſcheats, and in effect their Knights ſervices for the defence of the Realm, Wards, Marriages, Reliefs, and the like; and therefore it was called a dead hand, for that a dead hand yieldeth no ſervice.

32 H.6.23. Pl. Com. 483.

5 Mar. Brit. tit. Denizen 22.

Paſch. 29 Eliz. in Sir James Croſts caſe.
49 Aſſ. pl.2. 49 E.3.11.

Magna Charta cap.36.
7 E.1. de religioſis.
W.2. 13 E.1. ca.33.
15 R.2. ca.5. 23 H.8. ca.10.
39 Eliz. ca.5. 23 H.3. Aſſ.436.
29 Aſſ.p.17. Brit. f.32.
Fleta lib.3. cap.4, & 5.
19 E.2. tit. Vil.34.
29 E.3. ibid. 13. 21 E.3.5.
4 H.6.9. 19 H.6.62.65.
3 E.4.14. 19 E.3. Mortm.8.
34 H.6.37. 19 H.6.63.
7 E.4.14.
Pl. Com. 193. in Wrotteſleys caſe.

Le ſtatut. de religioſis 7 E.1.

I paſs over Villeins or Bondmen, who have power to purchaſe lands, but not to retain them againſt their Lords, becauſe you ſhall read at large of them in their proper place in the Chapter of Villenage.

An Infant or minor (whom we call any that is under the age of 21. years) hath without conſent of any other capacity to purchaſe, for it is intended for his benefit, and at his full age he may either agree thereunto and perfect it, or, without any cauſe to be alledged, waive or diſagree to the purchaſe; and ſo may his heirs after him, if he agree not thereunto after his full age.

A man of non ſane memory may without the conſent of any other purchaſe lands, but he himſelf cannot waive it; but if he dy in his madneſs, or after his memory recovered, without agreement thereunto, his heir may waive and diſagree to the ſtate, without any cauſe ſhewed: and ſo of an Ideot. But if the man of non ſane memory recovers his memory, and agrees unto it, it is unavoidable.

43 Aſſ. p.23.

Bract. lib.2. fol.12. & 32.

If an Abbot purchaſe lands to him and his ſucceſſors without the conſent of his Covent, he himſelf cannot waive it, but his ſucceſſor may upon juſt cauſe ſhewed, as if a greater rent were reſerved thereupon then the value of the land or the like; but he cannot waive it unleſs it be upon juſt cauſe: & ſic de ſimilibus. Prælatus Eccleſiæ ſuæ conditionem meliorare poteſt, deteriorare nequit. And in another place he ſaith, Eſt enim Eccleſia ejuſdé conditionis, quæ ſungitur vice minoris.

But

But no ſimile holds good in every thing, according to that ancient ſaying, Nullum ſimile quatuor pedibus currit. (a) An Hermaphrodite may purchaſe according to that Sex which prevaileth. A Feme covert cannot take any thing of the gift of her husband, but is of capacity to purchaſe of others without the conſent of her husband. And of this opinion was Littleton in our books, and in this book, Sect. 677. but her husband may diſagree thereunto, and debeſt the her husband agreed thereunto, yet ſhe may without any cauſe to be alledged waive the ſame, and ſo may her heirs alſo, if after the deceaſe of her husband ſhe her ſelf agreed not thereunto.

a) 1 H.7. 16. 7 H.4. 17. 18 H.6.8.39 E.4.3.32. 15 E.4. fol.1.b. 27 H.8. 24.

(b) A wife (Uxor) is a good name of Purchaſe, without a Chriſtian name, and ſo it is, if a Chriſtian name be added and miſtaken, as Em for Emelyn, &c. for utile per inutile non vitiatur. But the Queen, the Conſort of the King of England, is an exempt perſon from the King by the Common Law, and is of ability and capacity to purchaſe and grant without the King. Of which ſee more at large, Sect. 206.

b) A name of purchaſe. 2 H.4. 25. 1 H.5. 8. 46 E.3.22.12. Aſſ.16. 30 E.3.18. 1 Aſſ.11. 11 H.4.31.9 E.4.49. 13 E.3. Eſtoppel. 231. F. N. B. 9. 7. a.

(c) The Parishioners or Inhabitants, or probi homines of Dale, or the Churchwardens, are not capable to purchaſe lands, but goods they are, unleſs it were in ancient time, when ſuch grants were allowed.

c) 12 H.7.28.37 H. 6.30. 10 H.4.3.b.

(d) An ancient grant by the Lord to the Commoners in ſuch a waſte, that a way leading to their Common ſhould not be ſtreighened, was good, but otherwiſe it is of ſuch a grant at this day. (e) And ſo in ancient time a grant made to a Lord, & hominibus ſuis tam liberis quam nativis, or the like, was good, but they are not of capacity to purchaſe by ſuch a name at this day. But yet at this day if the King grant to a man to have the goods and cattels de hominibus ſuis or de tenentibus ſuis or de reſidentibus intra feodum, &c. it is good, for there they are not named as purchaſers or takers, but for another mans benefits, who hath capacity to purchaſe or take.

d) 32 E. 3. barre 261. e) 33 E.3. grant 83. 18 E.3. 50 12. Aſſ. 35. 14 H.6. 13 34. Aſſ. p.11. 40 Aſſ. p.21.

(f) And regularly it is requiſite that the Purchaſer be named by the name of Baptiſm and his ſurname, and that ſpecial heed be taken to the name of Baptiſm, for that a man cannot have two names of Baptiſm as he may have divers ſirnames. (g) And it is not ſafe in writs, pleadings grants, &c. to tranſlate ſurnames into Latine. As if the ſurname of one be Fitzwilliam, or Williamſon, if he tranſlate him to filius Willi. if in truth his father had any other Chriſtian name than William, the writ, &c. ſhall abate, for Fitzwilliam or Williamſon is his ſirname whatſoever Chriſtian name his father had, therefore the Lawyer never tranſlates ſurnames. And yet in ſome caſes, though the name of Baptiſm be miſtaken, (as in the caſe before put of the wife) the grant is good.

f) Bract. lib. 4. tract. 1.ca 20. Britton fol. 121, 122. 3 E.3.78.25 E 3 43. 26 Aſſ.61.30 Aſſ.16. 46 E.3.22. 39 E.3.17. 3 H. 6.25.19 H.6.2. 30 H.6. 1.34 H. 6.19. 11 H.4.27 9 E.4.29. 5 E.4.46.65.14 H.7.11. 20 Eliz. Dier.259. 8 E. 3.436.29 E.3. 25. 1 H.4.3 H.6.26. 19 H 6.2.

So it is if lands be given to Robert Earl of Pembroke where his name is Henry, to George Biſhop of Norwich, where his name is John, and ſo of an Abbot, &c. for in theſe and the like caſes there can be but one of that Dignity or name. And therefore ſuch a grant is good albeit the name of Baptiſm be miſtaken. If by Licence lands be given to the Dean and Chapter of the holy, and individed Trinity of Norwich, this is good, although the Dean be not named by his proper name, if there were a Dean at the time of the grant, but in pleading he muſt ſhew his proper name. And ſo on the other ſide, If the Dean and Chapter make a Leaſe without naming the Dean by his proper name, the Leaſe is good, if there were a Dean at the time of the Leaſe, but in pleading the proper name of the Dean muſt be ſhewed, and ſo is the Book of 18 E.4. to be intended for the ſame Judges in 13 E. 4. held the grant good to a Major, Aldermen, and Commonalty albeit the Major was not named by his proper name, but in pleading it muſt be ſhewed, as it is there alſo holden. If a man be baptized by the name of Thomas, and after at his Confirmation by the Biſhop is named John, he may purchaſe by the name of his Confirmation. And this was the caſe of Sir Francis Gawdye, late chief Juſtice of the Court of Common Pleas, whoſe name of Baptiſm was Thomas, and his name of Confirmation Francis, and that name of Francis by the advice of all the Judges in Anno 35 H.8. he did bear and after uſed in all his purchaſes and grants. (h) And this doth agree with our ancient Books, where it is holden that a man may have divers names at divers times, but not divers Chriſtian names. And the Court ſaid, that it may be that a woman was baptized by the name of Anable, and forty years after ſhe was confirmed by the name of Douce, and then her name was changed, and after ſhe was to be named Douce, and that all purchaſes, &c. made by her by the name of Baptiſm before her Confirmation remain good, a matter not much in uſe in our caſes by a known name, or by a certain deſcription of the perſon without either ſirname or name of Baptiſme, as Uxori I.S. as hath been ſaid, or primogenito filio, &c. or filio natu minimo I. S. or ſeniori puero, or omnibus filiis or filiabus I. S. or omnibus liberis ſeu exitibus of I. S. or to the heirs of I. S.

g) 40 E.3. 22. Fitzwilliam. 24 E.3.64. Fitz John. 39 E.3.24. Fitz Robert. 27 E.3.85. tit. grant 67. 18 E. 3.23,24.18 E.4.8. b. 14 H.7.31,32 13 E.4.8.5 E.3. Vouch. 179. 27 E. 3.85. where the proper name is miſtaken.

h) 22 R.2. bre.936. 12 R.2. feoffments 58. 9 E.3.14.46 E.3.22. 3 H.6.26.34 H. 6.29. 1 H.7.29 5 E.4. bre.741. 14 H.7.11.

(k) But if a man do infranchiſe a Villein, cum tota ſequela ſua; that is not ſufficient to infranchiſe his children born before, for the incertainty of the word ſequela. (i) But regularly in Writs, the Demandant or Tenant is to be named by his Chriſtian name and Surname, unleſs it be in caſes of ſome Corporations of Bodies politique.

i) 17 E.3.29.18 E.3.59. 33 E.3.18.11 H.4.84. Pl. Com.525. 21 R.2. deviſe 41 E.3.19.15 E.3. Counter. plea de Vouch.43. 35 Aſſ.13.37 H.6.30. 11 E.4.2.7 H.4.5. 40 E.3.9. 37 H.8. Noſme 40. Br.

k) 15 H.7.14.

l) 8 E.3.437.29 E.3. 44. 19 E.4.1.21 E.4.19. 7 H. 6.29.

(a) A baſtard having gotten a name by reputation may purchaſe by his reputed or known name to him and his heirs, although he can have no heir but of his body. A man makes a leaſe to B. for life, remainder to the eldeſt iſſue male of B. & the heirs males of his body. B. hath iſſue a baſtard ſon, he ſhall not take the remainder, becauſe in Law he is not his iſſue, for qui ex damnato coitu naſcuntur inter liberos non computentur. And as Littleton ſaith, A baſtard is quaſi nullius filius and can have no name of reputation as ſon as he is born. (b) So it is if a man make a leaſe for life to B. the remainder to the eldeſt iſſue male of B to be begotten of the body of Jane S. whether the ſame iſſue be legitimate or illegitimate B. hath iſſue a baſtard on the body of Jane S. this ſon or iſſue ſhall not take the remainder, for (as it hath been ſaid) by the name of iſſue, if there had been no other words he could not take and (as it hath been alſo ſaid) a baſtard cannot take, but after he hath gained a name by reputation, that he is the ſon of B, &c. (c) And therefore he can take no remainder limited before he be born, but after he be born and that he hath gained by time a reputation to be known by the ſame of a ſon then a remainder limited to him by the name of the ſon of his reputed father is good. But if he cannot take the remainder by the name of iſſue at the time when he is born he ſhall never take it. And ſo it ſeemeth, and for the ſame cauſe, if after the birth of the iſſue, B. had married Jane S. ſo as he became Baſtard eigne, and had a poſſibility to inherit, yet he ſhall not take the remainder.

(a) 39 E.3.11.24. 17 E.3.42. 35 Aſſ.13. 41 E.3.19.

Vid. Sect.188.

(b) So it was reſolved. M.38. & 39. Eliz. in Bre. de errore, for land in Portington in Com. Salop.

(c) 39 E.3.11.24. 35 Aſſ.13. 41 F.3. 19.17 E.3.42.

Perſons deformed having humane ſhape, Idiots, mad men, lepers, deaf, dumb, and blind, minors, and all other reaſonable creatures have power to purchaſe and retain lands or tenements. (d) But the Common Law doth diſable ſome men to take any eſtate in ſome particular things: As if an office either of the grant of the King or Subject which concerns the adminiſtration, proceeding, or execution of Juſtice, or the Kings revenue, or the Commonwealth, or the intereſt, benefit, or ſafety of the ſubject or the like; if theſe, or any of them be granted to a man that is unexpert, and hath no skill and ſcience to exerciſe or execute the ſame, the grant is meerly void, and the party diſabled by Law, and incaple to take the ſame, pro commodo regis & populi, for only men of skill, knowledge and ability to exerciſe the ſame are capable of the ſame to ſerve the King and his people. (e) An infant or minor is not capable of an office of Stewardſhip of the Court of a Mannor either in poſſeſſion or reverſion. (f) No man though never ſo skilful and expert, is capable of a judicial office in reverſion, but muſt expect until it fall in poſſeſſion. And ſee Sect.378. where bargaining or giving of money, or any manner of reward, &c. for offices there mentioned, ſhall make ſuch a purchaſer incapable thereof, which is worthy to be known, but more worthy to be put in due execution.

(d) 5 E.4.tit. offic. & officer. B.48. Vintors caſe. 5 Mar. Dier. fol.150. Scroggscaſe.

(e) M.40. & 41 Eliz. in the Kings Bench between Scamler and Walters.

(f) Lib. 11. fo.2. in Auditor Curles caſe. Vid. Sect.378. 1 H. 7.31.

Some are capable of certain things for ſome ſpecial purpoſe, but not to uſe or exerciſe ſuch things themſelves. As the King is capable of an office, not to uſe, but to grant, &c.

A monſter born within lawful matrimony, that hath not humane ſhape cannot purchaſe much leſs retain any thing. (g) The ſame Law is de profeſſis & mortuis ſeculo, for they are civiliter mortui, whereof you ſhall read at large in his proper place. Sect. 200.

(g) Bract. lib. 5.fo. 421. 415 Brit. ca.22.39. Fleta lib.6. cap.41. 1 E. 3.9. 4 E. 3.4. 3 H.6.24.21. R. 2. judgment 263. 7 H.4.2. 14 H.8.16. Doct. & Stud. 141. Pl. Com. fo.47. Britt. c.33.

¶ *Purchaſe.* In Latine Perquiſitum of the Verb Perquirere, Littleton deſcribeth it in the end of this Chapter in this manner, Item, purchaſe eſt appel le poſſeſſion de trés ou tenemẽts que home ad per ſon fait, ou per ſon agreement, a quel poſſeſſion il ne avient per title de diſcent de nul de ſes anceſters, ou de ſes coſens mes per ſon fait demẽ. So as I take it, a purchaſe is to be taken, when one cometh to lands by conveyance or title, and that diſſeiſins, abatements, intruſions, uſurpations, and ſuch like eſtates gained by wrong, are not ſaid in Law purchaſes, but oppreſſions and injuries

Note, that purchaſers of lands, tenements, leaſes, and hereditaments for good and valuable conſideration, ſhall avoid all former fraudulent and covinous conveyances, eſtates, grants, charges and limitations of uſes, of or out of the ſame, (h) by a Statute made ſince Littleton wrote, whereof you may plainly and plentifully read in my Reports, to which I will add this caſe, I. C. had a Leaſe of certain lands for 60 years, if he lived ſo long, and forged a Leaſe for 90 years abſolutely, and he by Indenture reciting the forged Leaſe for valuable conſideration bargained and ſold the forged Leaſe, and all his intereſt in the Land to R. G. It ſeemed to me that R. G. was no purchaſer within the Statute of 27 Eliz. for he contracted not for the true and unlawful intereſt, for that was not known to him, for then perhaps he would not have dealt for it, and the viſible and known term was forged; and although by general words the true intereſt paſſed, notwithſtanding he gave no valuable conſideration, nor contracted for it. And of this opinion were all the Judges in Serjeants Inne in Fleſtreet.

(h) 27 Eliz. ca.4. 13 Eliz. ca. 5. Lib. 3. fo.80.82. 83. Twines caſe Lib.5. fo.60. Gooches caſe, lib. 6. fo. 72. Burrels caſe, lib. 11. fo.74. Paſch.12. Ja. inter Jones pl. and Sir Rich. Groobham def. in ejectione firme in evidence all Jury.

(i) In ancient time when a man made a fraudulent feoffment it was ſaid, quod poſuit terram illam in brigam, where brigam doth ſignify wrangle, contention, or intricacy, for fraud is the mother of them all. (k) And on the other ſide, purchaſes, eſtates, and contracts may be avoided ſince Littleton wrote by certain Acts of Parl. againſt Uſury above ten in the hundred, in ſuch manner and form as by thoſe Acts it is provided. Which Statutes are well expounded in my books of Reports which may be read there. To them that lend money my cabeat, is that neither

(i) Hill. 18.E. 3. coram Rege in Theſaur.

(k) 37 H.8. cap.6. 13 Eliz. ca.8. lib.5. 10. 69. Burtons caſe, eodem lib.10.7. Claitons caſe.

neither directly nor indirectly, by art, or cunning invention, they take above ten in the hundred; for they that ſeek by ſleight to creep out of theſe Statutes, will deceive themſelves, and repent in the end.

¶ *Purchaſe terres.* Littleton here and in many other places putteth Lands but for an example, for his rule extendeth to Seignories, Rents, Advowſons, Commons, Eſtovers, and other hereditaments of what kind and nature ſoever. Lands and other things to be purchaſed.

¶ *Terre.* Terra, Land in the legal ſignification comprehendeth any ground, ſoil or earth whatſoever, as Meadows, Paſtures, Woods, Moors, Waters, Marſhes, Furſes and Heath, Terra eſt nomen generaliſſimum, & comprehendit omnes ſpecies terræ, but properly Terra dicitur à terendo, quia vomere teritur, and anciently it was written with a ſingle r, and in that ſenſe it includeth whatſoever may be plowed, and is all one with arvum ab arando. It legally includeth alſo all Caſtles, Houſes and other buildings: for Caſtles, Houſes, &c. conſiſt upon two things, viz. land or ground, as the foundation and ſtructure thereupon, ſo as paſſing the land or ground, the ſtructure or building thereupon paſſeth therewith. * Land is anciently called Flesh, but land builded is more worthy than other land, becauſe it is for the habitation of man, and in that reſpect hath the precedency to be demanded in the firſt place in a Præcipe, as hereafter ſhall be ſaid. And therefore this element of the Earth is preferred before the other elements, firſt and principally, becauſe it is for the habitation and reſting place of man, for man cannot reſt in any of the other elements, neither in the Water, Ayr or Fire. For as the Heavens are the habitation of Almighty God, ſo the Earth hath he appointed as the Suburbs of Heaven, to be the habitation of man; Cœlum cœli Domino, terram autem dedit filiis hominum. All the whole Heavens are the Lords, the Earth hath he given to the children of men. Beſides every thing as it ſerveth more immediately or more meerly for the food and uſe of man (as ſhall be ſaid hereafter,) hath the precedent dignity before any other. And this doth the earth, for out of the earth cometh mans food, and bread that ſtrengthens mans heart, Confirmat cor hominis, and Wine that gladdeth the heart of man, and Oyl that makes him a chearful countenance. And therefore Terra olim Ops mater dicta eſt, quia omnia hæc opus habeant ad vivendum. And the Divine agreeth herewith, for he ſaith, Patriam tibi & nutricem, & matrem, & menſam, & domum poſuit terram Deus, ſed & ſepulchrum tibi hanc eandem dedit. Alſo the Waters that yield fiſh for the food and ſuſtenance of man, are not by that name demandable in a Præcipe but the land whereupon the water floweth or ſtandeth is demandable, (as for example,) vigenti acr' terræ aqua cooperf; and beſides, the earth doth furniſh man with many other neceſſaries for his uſe, as it is replenished with hidden treaſures: namely, with Gold, Silver, Braſſe, Iron, Tinne, Lead, and other mettals, and alſo with great variety of pretious ſtones, and many other things for profit, ornament and pleaſure. And laſtly, the earth hath in Law a great extent upwards; not only of Water, as hath been ſaid, but of Ayr, and all other things, even up to Heaven, for cujus eſt ſolum ejus eſt uſque ad cœlum, as it is holden, 14 H. 8. fo. 12. 22 H. 6. 59. 10 E. 4. 14. Regiſt. origin. and in other Books.

Pl. Com. 168 b. & 170. a & 152 Lib. 4. 87. b. Lutterels caſe. 4 E. 3. 161. & 6 E. 3. 283. 8 E. 3. 377. Temp. E. 1. Bre. 811. 28 H. 8. Dyer. 47.

* Tr. 7 E. 3. coram Rege Northampt. in Theſaur.

Pſal. 115. 16.

Pſal. 104. 25.

Chryſoſt. Hom. 30.

And albeit land whereof our Author here ſpeaketh, be the moſt firm and fixed inheritance; and therefore it is called ſolum, quia eſt ſolidum, and Fee ſimple, the moſt highest and abſolute eſtate that a man can have, yet may the ſame at ſeveral times be movable, ſometime in one perſon, and alternis vicibus in another, nay ſometime in one place, and ſometime in another. As for example, if there be 80 acres of meadow which have been uſed time out of mind of man, to be devided between certain perſons, and that a certain number of acres appertain to every of theſe perſons; as for example, to A. 13. acres to be yearly aſſigned and allotted out, ſo as ſometime the 13. acres lye in one place, and ſometime in another, and ſo of the reſt. A hath a movable Fee ſimple in 13 acres, and may be parcel of his Manor, albeit they have no certain place, but yearly ſet out in ſeveral places, ſo as the number only is certain, and the particular acres or place wherein they lye after the year incertain. And ſo it was adjudged in the Kings Bench upon an eſpecial verdict.

Vid. ſect. 59. wherein this caſe livery ſhall be made.

Vid. ſect. 648. How theſe 13 acres may be charged. Hill. 34. Eliz. Rot. 489. in trns inter Weldon & Bridgwater in Banco Regis Temps. E. 1. tit. partition. 21. F. N. B. 62. I. Videli. 1. fo. 87. per. Walmeſ. F. N. B. 62. K.

If a partition be made between two Coparceners of one and the ſelf-ſame land, that the one ſhall have the land from Eaſter until Lammas to her and to her heirs, and the other ſhall have it from Lammas to Eaſter to her and her heirs; or the one ſhall have it the firſt year, and the other the ſecond year, alternis vicibus, &c. there it is one ſelf ſame land, wherein two perſons have ſeveral inheritances at ſeveral times. So it is if two Coparceners have two ſeveral Manors by deſcent, and they make partition, that the one ſhall have the one Manor for a year, and the other the other Manor for the ſame year, and after that year, then ſhe that had the one Manor ſhall have the other, & ſic alternis vicibus for ever, and albeit the Manors be ſeveral, yet are they certain, and therefore ſtronger then Bridgewaters caſe, ſo as this doth make a diviſion of eſtates of inheritances of lands, viz. Certain or unmoveable whereof Littleton here ſpeaketh, and incertain and moveable, whereof theſe three caſes for examples have been put. Wherein it is to be noted, that the poſſeſſion is not only ſeveral, but the inheritance alſo.

Vide ſect. 184. where avowſons, &c. may be appendant and in gros.

It

By what names, &c, lands, &c. ſhall paſs.
(a) Vide Sect. 279.
14 H. 8. 6. 4 H. 7. 3. 10 H. 7. 24. 11 H. 7. 21. 14. H. 7. 4. 6. 21 H. 7. 36, 37. 9 H. 6. 52. 37 H. 6. 35. 22 E. 4. barre 116. 11 H. 4. 90. 18 E. 3. Execution 56. 4 E. 3. 48. 8 E. 3. 13. 9 Aſſ. p. 12. 38 E. 3. 24.
(b) Bracton fol. 222. 17 E. 3. 75. 39. H. 6. 38. 11 Eliz. Dier 285.
(c) Paſch. 12. Ia. Inter Dockwray & Points in evidence al Jury in Banke le Roy.
(d) Vide Sect. 279. Bracton fo. 208. 40 E. 3. 45. Pl. Com. 154. 10 H. 7. 24. 28. 7 H. 7. 13. 18 H. 6. 29. 34 H. 6. 43. 20 H. 6. 4. 18 E. 4. 4. 4 E. 3. 48. 1 E. 3. 4. 32 E. 3. Scir. fac. 100. 22 E. 4. barre 116. 12 H. 3. Aſſ. 427. 34. Aſſ. 11. 13 E. 3. tit. Entry 57. 20 E. 3. 3. Bre. 685. W. 2. ca. 24.
(e) Tr. 11 R. 2. in trns ment. imprimee ne abridg. 11 A. 74.
(f) 7 E. 3. 342. 5. Aſſ. 9, 10. 7. Aſſ. 9.
(g) 45 E. 3. tit. feoffments & faits 90. 14 H. 8. 6. Pl. Com. 541. b. F. N. B. fo. 8. 12 E. 3. Dower 90.
(h) 9 Aſſ. p. 12. 9 E. 3. 443. 466. Domeſday. 7 R. 1. int. fines in Theſaur.
(i) Int. Inquiſit apud Launcaſt. Anno 6 E. 1. in Theſaur. Mich. 1 H. 5. coram Rege Rot. 3. in Theſaur.
(k) Tr. 7. Eliz. in Banco regis lib. 5. fo. 11. Ives caſe. 14 H. 8. 1. 46 E. 3. 22. 28 H. 8. Dier 19. 32 H 8. Br. relevat. 39. 7 E. 6. Dier 79.
* Glanvil. lib. 8. cap. 3.
(l) Domeſday Regiſt. F. N. B 2
(m) 8 E. 2. Waſt. 111. 7 Aſſ. 18. 17 Aſſ. p. 13. 41 E. 3. Walt. 82.
* Hill. 14 E. 3. coram Rege Lanc. in Theſaur.
* Inter inquiſit. apud Lanc. in com. Cornubie coram Juſti. And. anno 6 E. 1. in Theſaur. The B. of Exceſters caſe.
(n) Domeſday.
(o) Camden. 460. 151.
(p) Paſch. 44 E. 3. coram Rege in Theſaur.
(q) Hill, 13 E. 2. Lanc. coram Rege in Theſaur. Camden Britt. 247. Rot. Parl. 18 E. 1. 8. Eveſque de Carliles caſe.
(r) Pl. Com. 169. a 4 E. 2. Bre. 792, 793. 3 E. 3. 86. 4 E. 4. 1. 27 H. 8. 12.
(s) 20 Aſſ. pl. 9.
(t) Pl. Com. 169. a. 33. E. 3. Bre. 241. 33 E. 3. Entry 80.
(u) Domeſday. F. N. B. 2 Reg.

It is alſo neceſſary to be ſeen by what names lands ſhall paſs. (a) If a man hath twenty acres of land & by Deed granteth to another and his heirs, veſturam terræ, and maketh Livery of ſeiſin ſecundum formam cartæ, the land it ſelf ſhall not paſs, becauſe he hath a particular right in the land for thereby he ſhall not have the houſes, timber, trees, mines, and other reall things parcel of the Inheritance, but he ſhall have the veſture of the land; (that is) the Corn, Graſſe, Underwood, Swepage, and the like, and he ſhall have an Action of treſpaſſe, quare clauſum fregit. (b) The ſame Law, if a man grant herbagium terræ, he hath a like particular right in the Land, and ſhall have an Action quare clauſum fregit, but by grant thereof and livery made, the ſoil ſhall not paſs, as is aforeſaid. (c) If a man let to B. the herbage of his woods, and after grant all his lands in the tenure, poſſeſſion, or occupation of B. the woods ſhall paſs, for B. hath a particular poſſeſſion and occupation, which is ſufficient in this caſe, and ſo it was reſolved. (d) So if a man be ſeiſed of a River, and by Deed do grant ſeparalem piſcariam in the ſame, and maketh livery of ſeiſin ſecundum formam cartæ, the ſoil doth not paſs nor the water, for the Grantor may take water there; and if the river become dry, he may take the benefit of the ſoil, for there paſſed to the Grantee but a particular right, and the livery being made ſecundum formam cartæ, cannot enlarge the grant. (e) For the ſame reaſon, if a man grant aquam ſuam, the ſoil ſhall not paſs, but the Piſcary within the water paſſeth therewith. And land covered with water, ſhall be demanded by the name of ſo many Acres, aqua cooperi, whereby it appeareth that they are diſtinct things. (f) So if a man grant to another, to dig turves in his land, and to carry them at his will and pleaſure, the land ſhall not paſs, becauſe but part of the profit is given, for trees, mines, &c. ſhall not paſs. (g) But if a man ſeiſed of lands in fee, by his Deed granteth to another the profits of thoſe lands, to have and to hold to him and his heirs, and maketh livery ſecundum formam cartæ, the whole land it ſelf doth paſs: for what is the land but the profits thereof, for thereby veſture, herbage, trees, mines, and all whatſoever parcel of that land doth paſs.

(h) By the grant of the Boilloury of ſalt, it is ſaid, that the ſoil ſhall paſs, for it is the whole profit of the ſoil. And this is called Saliva of the French word Saltre, for a Salt pit, and you may read de Saliva in Domeſday; and Selda, ſignifieth the ſame thing: (i) and where you ſhall read in Records, de lacerta in profunditate aque ſalſe, there lacerta ſignifieth a fathome. A man ſeiſed of divers acres of wood, grants to another omnes boſcos ſuos, all his woods, not only the woods growing upon the land paſs, but the land it ſelf, and by the ſame name ſhall be recovered in a Præcipe, for Boſcos doth not only include the trees, but the land alſo whereupon they grow.

(k) The ſame Law if a man in that caſe grant omnes Boſcos ſuos creſentes, &c. yet the land it ſelf ſhall paſs, as hath been adjudged. * Fraſſetum ſignifieth a wood, or ground that is woody. (l) If a man hath a wood of Elder trees containing 20 acres, and granteth to another 20 acras Alneti (with an N, not a V,) the wood of Elders, and the ſoil thereof ſhall paſs, but no other kind of woods ſhall paſs by that name. Alnetum eſt ubi alniarbores creſcunt. * And Sullings are taken for Elders. (m) Salicetum doth ſignifie a wood of willowes, ubi ſalices creſcunt, theſe trees in our Books are called Sawces. * Selda is a wood of Sallowes, Willowes, or Withies. A Vyzacky ground is called Filicetum, ubi filices creſcunt. A wood of Aſhes is called Fraxinetum ubi fraxini creſcunt, and paſſeth by that name, and Lupulicetum where hops grew, and Arundinetum, where reeds grow. Some ſay that Dene or Denne, whereof Dena commeth, is properly a valley or dale. Dena ſylvæ, and the like. (n) As Droſden, or Druſden, or Druden, ſignifieth a thicket of wood in a valley, for Druf or Dru, ſignifieth a thicket of wood, and is often mentioned in Domeſday. And ſometime Dena or Denna ſignifieth, as Villa and Denne, a town.

(o) Cope ſignifieth a hill, and ſo doth Lawe, as Stantlawe is Saxeus collis, (p) Howe alſo ſignifieth a hill. And Hope combe, and Stew are valleys and ſo doth Clough. And Dunum or Duna, ſignifieth a hill or higher ground, and therefore commonly the towns that end in Dun have hills or higher grounds in them, which we call Downs. It commeth of the old French word Dun.

(q) In our Latine a wood is called Boſcus. Glava ſignifieth a little wood, in old Deeds, and Huſt or Hurſt a wood, and ſo doth Holt and Shawe. Twaite ſignifieth a wood grubbed up, and turned to arable. Stethe or Stede betokeneth properly a bank of a River, and many times a place, as Stowe doth, and Wic a place upon the Sea ſhore, or upon a River. Lea or Ley ſignifieth paſture.

(r) If a man doth grant all his paſtures, Paſturas, the land it ſelf imployed to the feeding of beaſts doth paſſe, and alſo ſuch paſtures or feedings, as he hath in another mans ſoil, Leſwes or Leſues is a Saxon word, and ſignifieth paſtures. (ſ) Between Paſture and Paſcuum, the legal difference is that Paſtura in one ſignification containeth the ground it ſelf called paſture, and by that name is to be demanded. Paſcuum feeding, is whereſoever cattel are fed, of what nature ſoever the ground is, and cannot be demanded in a Præcipe by that name.

(t) If a man grant omnia prata ſua, all his meadowes, the land it ſelf of that kind paſſe, & dicitur pratum quaſi paratum, becauſe it groweth ſponte without manurance. (u) A man grants omnes brueras ſuas, the ſoil where heath doth grow paſſeth, and may be demanded by that name

in

in a præcipe. It is derived from bruyer, a French word for heath, and it is called Ros in the Britiſh tongue.

Roncaria or Runcaria ſignifieth land full of brambles and briers, and is derived of Roncier the French word, which ſignifieth the ſame, and as much as ſenticetum. (a) By the grant of omnes Juncarias, or joncarias, the ſoil where ruſhes do grow doth paſs; for Jonc in French is a Ruſh, whereof Joncaria cometh. (b) A man grants omnes Ruſcarias ſuas, the ſoil where ruſci, i. bna= holm, or Butchers-pricks, or broom, do grow, ſhall paſs, and ſo in the verſe in the Regiſter it is called; but in F. N. B. fol. 2. in the verſe, Piſcharia is put in ſtead of Ruſcaria. And Jampna cometh of Jonc and nower, a watериſh place, and is all one in effect with Joncaria. He that granteth omnes mariſcos ſuos, all his fenns or mariſh grounds do paſs. Mariſcus is derived of the French word mares or marets; the Latin word for it is palus, or locus paludoſus. Mora is derived of the Engliſh word Moor, and ſignifieth a more barren and unprofitable ground then Marſhes, dangerous for any Cattel to go there, in reſpect of mire and mooriſh ſoil, neither ſerves it for getting of turfs there. (c) You ſhall read in Record, that ſuch a man perquiſivit treſcent. acr. maretti, &c. This word marettum is derived of mare the Sea and tego, and properly ſignifieth a mooriſh and gravelly ground, which the ſea doth cover and overflow at a full ſea, and lieth between the high-water-mark and the low-water-mark, infra fluxum & refluxum maris. By grant of theſe particular kinds, the lands of theſe particular kinds only do paſs; but, as hath been ſaid, by the grant of land in generall, all theſe particular kinds, and ſome others, do paſs. Non mihi ſi centum linguæ ſint oraque centum, Omnia terrarum percurrere nomina poſſem. And therefore let us turn our eye to generall words, which do include lands of ſeveral ſorts and qualities. (d) By the name of an Honor, which a ſubject may have, divers mannors and lands may paſs. So by the name of an Iſle, Inſula, many mannors, lands and tenements may paſs.

Holme or Holmus ſignifieth an Iſle or fenny ground. * A Commote is a great Seigniory, and may include one or divers mannors. (e) By the name of a Caſtle, one or more mannors may be conveyed; & è converſo, by the name of a mannor, &c. a Caſtle may paſs. In Domeſday I read, Comes Alanus habet in ſuo caſtellatu 200 maneria, &c. præter caſtellariam habet 43 manſus muralis. (f) But note by the way, that no ſubject can build a Caſtle, or houſe of ſtrength imbattelled, &c. or other fortreſſe defenſible, called in Law by the names aforeſaid, and ſometimes domus kernellatæ, or carnellatæ, imbattellatæ, tenellatæ, machecollatæ, meſe carnellet, &c. without the licence of the King, for the danger which might enſue, if every man at his pleaſure might do it. And they be called imbatteilments, becauſe they are defences againſt battels in aſſaults. Tenellare, or tanellare, is to make holes or loops in walls to ſhoot out againſt the aſſailants. Machecollare or machecoulare, is to make a warlike device over a gate or other paſſage, like to a grate, through which ſcalding water, or ponderous or offenſive things, may be caſt upon the aſſailants. But to return to the matter from whence upon this occaſion we are fallen.

By the name of a town, Villa, a mannor may paſſe. In Domeſday, Alodium (in a large ſenſe) ſignifieth a free mannor, and Alodiarii or Alodarii, Lords of the ſame, and Lannemanni there ſignifie Lords of a Mannor, having ſocam & ſacam de tenentibus & hominibus ſuis. (g) And by the name of a mannor divers towns may paſs. Quod olim dicebatur fundus, nunc manerium dicitur. By the name of a ferm or fearme, firma, houſes, lands and tenements may paſſe: and firma is derived of the Saxon word feormian, to feed or relieve, for in ancient time they reſerved upon their Leaſes cattel and other victual and proviſion for their ſuſtenance. (h) Note, a fearm in the North parts is called a Tacke, in Lancaſhire a Fermholt, in Eſſex a Wike. But the word fearm is the general word, and anciently fundus ſignified a fearm, and ſometime land. (i) Lands making a Knights fee ſhall paſs by the grant of a Knights fee, de uno feodo militis.

(k) Unum ſolinum, or ſolinus terræ, in Domeſday-book containeth two plow-lands, and ſomewhat leſſe then an half; for there it is ſaid, Septem Solini, or Solina, terræ ſunt 17 carucat'. Una hida, ſeu carucata terræ, is all one as a plow-land, viz. almuch as a plough can till: ſullerye alſo ſignifieth a plow-land. Una virgata terræ, a yard-land, the Saxons called it Girdland, and now the G. is turned to a Y. is in ſome Countries 10. in ſome 20. in ſome 24. in ſome 30, &c. (l) Una bovata terræ, an oxgang, or an oxgate of land, is as much as an oxe can till. (m) But carucata terræ, and bovata terræ, are words compound, and may contain meadow, paſture, and wood, neceſſary for ſuch tillage. Jugum terræ in Domeſday containeth half a plow-land. And by all theſe names in the reign of R. 1. lands were uſually demanded, and long after.

(n) By the name of a Grange, Grangia, a houſe or edifice, not onely where corn is ſtored up, like as in barns, but neceſſary places for husbandry alſo, as ſtables for hay and horſes, and ſtables and ſtyes for other cattel, and a curtilage, and the Cloſe wherein it ſtandeth, ſhall paſſe; and it is a French word, and ſignifieth the ſame, as we take it.

(o) Stagnum, in Engliſh a pool, doth conſiſt of water and land; and therefore by the name of Stagnum,

(a) Regiſt. 1 E.3. 4. F.N.B. 6.

(b) 16 Aſſ. p. 9. Regiſter. Jampna.

(c) Paſch. 41 E.3. coram Rege, Lincoln. rot. 28.

(d) Mag. Cart. c. 31. Wallingford, Nott. Bolon. Lanc. &c. Trin. 33 E. 1. coram Rege in Theſ. honor de Huntingdon. Mich. 9 E. 2. coram Rege in Theſ. 18 E. 2. Aſſ. 377. 26 Aſſ. p. 60. 6 E. 3. 56. 47 E. 3. 21. honor de Peverel. 49 E. 3. 24. honor de Egles. 9 H. 6. 27. 36 H. 8. Dier 58. honor de Glouc. F. N. B. 265. honor Abbath. de Merle. 5 E. 4. 129. 7 H. 6. 39. 1 E. 3. 4. &c. 13 E. 3. juriſdict. 23. Li. 4. fo. 88. Lutterels caſe. 5 H. 7. 9. 14 H. 4. in recordo longo. 8 H. 4. Pl. Com. 168. 8 H. 7. 1. 4 E. 4. 16.

* 13 E. 3. juriſdict. 23.

(e) 26 Aſſ. 54. 29 E. 3. 15. 29 H. 6. travers 4. Bract. fo. 434. 1 E. 3. 4. 5 H. 7. 9. 3 E. 2. Avowry 188. 37 H. 6. 26. 18 H. 6. 11. Lib. rubr. ſcac. fol. 18.

(f) In veter. Mag. Carta cap. eſcheatrie fol. 162. Britt. ca. 20. Rot. Parliam. 45 E. 3. nu. 34. 6 H. 4. nu. 19. 1 E. 4. cap. 1. Rot. Parl. 1 E. 3. 2. pars, Alano Charleton. 22 E. 3. 2. pars, Thomæ Barkley, &c.

(g) Lamb. expoſit. verb. ferme. Pl. Com. 195.

(h) Pl. Com. 169. Regiſt. 227. b. eject. firmæ.

(i) 17 E. 3. fol. 8. 5 E. 3. 213. 16 E. 3. bre. 165. 12 E. 2. bre. 814.

(k) 4 E. 3. 161. 6 E. 3. 283. 2 E. 3. 5. 35 H. 6. 29. Pl. Com. 168. 7 Aſſ. 18. 11 Aſſ. 13. Lamb. expoſ. verb. Hyda & virgat. terræ. Glanvil lib. cap. Domeſday. Bract. lib. 2. cap. 26, 27. & lib. 5. fol. 434. Regiſt. 72.

(l) 45 E. 3. fine 49. 13 E. 2. fine 67. 39 H. 6. 8. 4 E. 3. 159. 8 E. 3. 377. Bracton fol. 180. 269. 431. 5 H. 3. Droit 66. Pl. Com. 168.

(m) 12 E. 3. bre. 241. 2 E. 3. 57. temp. E. 1. bre. 811. Pl. Com. 168.

(n) Pl. Com. 169. Linwood. 44 E. 3. 21. 4 E. 3. 32.

(o) 4 E. 3. tit. feoffments & faits 79. 14 E. 3. Formedon 34. 34 Aſſ. pl. 11.

Stagnum, or a pool, the water and land ſhall paſs alſo. (a) In the ſame manner, Gurges, a deep pit of water, a gorge or gulf, conſiſteth of water and land, and therefore by the grant thereof by that name the ſoil doth paſs, and a præcipe doth ly thereof; and he ſhall lay his eſplees in taking of fiſhes, as Wyeams and Roches. In Domeſday it is called guort, gort, and gors plurally, as for example, de 3. gorz mille anguillæ.

(b) So it is of a Foreſt, Park, Chaſe, Vivary, and Warren, in a mans own Ground, by the grant of any of them, not onely the priviledge but the land it ſelf paſſes, for they are compound. In the Book of Domeſday that is called leuvad and leuga, and leuved and leuve, which in Latine is called leuca.

(c) Stadium, or ferlingus ſive ferlingum, or quarentena terræ, is a furlong of Land, and is as much as to ſay a furrow-long, which in ancient time was the eighth part of a mile; and land will paſs by that name. And ſome hold, that by that name land may be demanded. And de ferlingis & quarentenis you ſhall read divers times in the Book of Domeſday, and there you ſhall read, In inſula Rex habet unum fruſtum terræ, unde exeunt ſex vomeres. Nota fruſtum ſignifieth a parcell. (d) Wareſtum, or Wareccum, or varectum, doth ſignify fallow; Terra jacet ad Warectum, the land lieth fallow: but in truth the word is vervactum, quaſi vere novo victum ſeu ſubactum, terra novalis ſeu requieta, quia alternis annis requieſcat. (e) Tam culta novalia. (f) By the grant of a meſſuage, or houſe, meſſuagium, the orchard, garden and curtilage do paſs; and ſo an acre or more may paſs by the name of an houſe. It is derived of the French word Meſe. (g) In Domeſday, a houſe in a City or Burrough is called haga; other houſes are called there manſiones, manſuræ, & domus: (h) and in an ancient plea concerning Feverſham in Kent, hawes are interpreted to ſignify manſiones. In Norman French it is called meſiul or meſuil. Bye ſignifieth a dwelling, bye an habitation, and byan to dwell.

It is to be noted, that in Domeſday there be often named bordarii ſeu borduanni, coſces, coſcet, cotucami, cotarii, all in effect boores, or husbandmen, or cottagers; ſaving that bordarii, which cometh of the French word borde for a cottage, ſignifieth there boores holding a little houſe with ſome land of husbandry bigger then a cottage; and coterelli are meer cottagers, qui cotagia & curtilagia tenent.

Villani in Domeſday (often named) are not taken there for bondmen, but had their name de villis, becauſe they had Fermes, and there did work of husbandry for the Lord; and they were ever named before bordarii, &c. and ſuch as are bondmen are called there ſervi.

(i) Coleberti, often alſo named in Domeſday, ſignifieth Tenants in free ſocage by free rent, and ſo it is expounded of record. Radmans and Radchemiſters, (Rad, or rede, ſignifieth firm and ſtable) there alſo often named, are liberi tenentes qui arabant & herciebant ad curiam domini, ſeu falcabant, aut metebant, becauſe their eſtates are firm and ſtable: and they are many times called Sochemans and Sokemanni, becauſe of their plough ſervice.

Dreuchs ſignifieth free Tenants of a Mannor, there alſo named. Taini or thaini mediocres were freeholders, and ſometime called milites regis, and their land called Tainland, and there it is ſaid, hæc terra T R E fuit Tainland, ſed poſtea converſa in Reveland. (k) But thainus regis is taken for a Baron, for it is ſaid in an ancient Author, Thainus regis proximus Comiti eſt; & ibidem, mediocris thainus, & alibi, Baro, ſive thainus. Berquarium or Bercaria cometh of Berc, an old Saxon word, uſed at this day for barks or rindes of trees, and ſignifieth a Tanhouſe, or a heath-houſe, where barks or rindes of trees are laid to tan withall: and Berquarii are mentioned in Domeſday. It ſignifieth alſo, and more legally, a ſhepcoat, of the French word Bergerie.

(l) By Vaccaria in Law is ſignified a Dairy-houſe, derived of Vacca the cow. In Latine is is Lactarium or Lactitium: and vaccarius is mentioned in Domeſday. And Fleta maketh alſo mention of porcaria a ſwine-ſty.

The content of an Acre is known, the name is common to the Engliſh, German, and French. In legal Latine it is called Acra, which the Latiniſts call jugerum. In Domeſday it is called Arpen prati, ſylvæ, &c. 10 R.1. inter fines, Acra in Cornwall continet 40. perticatas in longitudine, & 4. in latitudine, & quælibet perticata de 16. pedibus in longitudine.

(m) By the grant of a Selion of land, Selio terræ, a ridge of land, which containeth no certainty, for ſome be greater and ſome be leſſer, and by the grant de una porca, a ridge doth paſs. Selio is derived of the French word Sellon for a ridge.

(n) By the grant de centum libratis terræ, or 50. libratis terræ, or centum ſolidatis terræ, &c. land of that value paſſeth, and ſo of more or leſs: and in ancient time by that name it might have been demanded. And many things may paſs by a name, that by the ſame name cannot be demanded by a præcipe, (for that doth require more preſcript form:) but whatſoever may be demanded by a præcipe, may paſs by the ſame name by way of grant.

Frythe is a plain between woods, and ſo is lawnd or lound. Combe, hope, dene, glyn, hawgh, howgh, ſignifie a Vally; Howe, hoo, knol, law, peu, and cope, a hill. Ey, Ing and worth, ſignifie a watry place of water. Faleſia is a bank or hill by the ſea-ſide, it cometh of falaize, which ſignifieth the ſame. Of all theſe you ſhall read in ancient Books, charters, deeds, and

(a) 13 E.3.4. 4 E.3.143. 8 E.3.381. 10 E.3.382. 13 E.3. entry 57. F.N.B. 191. h. Domeſday.

(b) Temps E.1. bre.861. 4 E.3.5. 10 H.7.30. 44 E.3.12. 43 E.3.24. 35 H.6 55. 3 H.6.2. Domeſday. Bracton lib.4. fo.235. Int. adjudicat. coram Rege. P. 39 E.3. lib.2. fol.95. in Theſaur.

(c) 40 Aſſ.38. 4 H.6.14. 35 E.1. cap.6. Anno 10 R.1. inter fines in Theſaur. Ferlingus terræ continet 32. acras. Domeſday.

Fruſtum. 16 E.3. tit. common 9.

(d) Mich. 8 H.3. incipien. 9. Coram Rege, War. Ro.6.

(e) Virg. eclog.1.

(f) Bract. 211.233. 22 E.4. fin. 140. Pl. Com.168.171. 23 H.8. Br. feoffments 53. 9 Aſſ.p.21. 35 H.6.44. Pl. Com.169.

(g) Domeſday.

(h) Paſch.30 E.1. coram Rege, Kanc. in Theſaur. Statut. de extent. manerii. Domeſday.

Domeſday.

(i) In. placit. coram domino Rege, Mich. 10 E.3. Rot.26.

Lamb. Expoſit. verb. Thanus.

(k) Lib. Rub. cap.15. & c.41. & 76. W.2. cap.46. 7 H.4.38. Lib. dentries tit. Aſſ. corps pol.2.

Domeſday.

(l) 7 H.4.38. Fleta lib.2. cap.35.

Domeſday. 10 R.1. Inter fines.

(m) 9 E.3.39. Temps E.1. Br.866. Mich. 30 E.1. coram Rege, Gloc. in Theſaur.

(n) Bract.fo.377.431. 43 E.3.27. Regiſt. fo.1.94. 248, 249. F.N.B. fo.87. F.I. Regula.

(p) 7 R.1. inter fines Suſſex.

and recoꝛds, and to the end that our ſtudent ſhould noꝛ be diſcouraged foꝛ want of knowledge when he meeteth with them (neſcit enim generoſa mens ignorantiam pati) we have armed him with the ſignification of them, to the end he may proceed in his reading with alacrity, and ſet upon, and know, how to woꝛk into with delight theſe rough mines of hidden treaſure.

(m) By the name of Minerva, oꝛ Fodina Plumbi, &c. the land it ſelf ſhall paſs in a grant if liuery be made, and alſo be recovered in an aſſiſe, & ſic de ſimilibus.

By the grant of a fould courſe, oꝛ the like, lands and tenements may paſs. (n) Tenementum, Tenement, is a large woꝛd to paſs, not only lands and other inheritances which are holden; but alſo offices, rents, commons, profits appꝛender out of lands, and the like, wherein a man hath any frank tenement, and whereof he is ſeiſed ut de libero tenemento. But hæreditamentum, hereditament, is the largeſt woꝛd of all in that kind: foꝛ whatſoever may be inherited is an hereditament, be it coꝛpoꝛeal oꝛ incoꝛpoꝛeal, real, oꝛ perſonal, oꝛ mixt.

(o) A man ſeiſed of lands in fee hath divers Charters, deeds and evidences, and maketh a feoffment in fee, either without warranty, oꝛ with warranty only againſt him and his heirs, the purchaſer ſhall have all the Charters, deeds and evidences, as incident to the lands, & ratione terræ, to the end he may the better defend the land himſelf, having no warranty to recover in value, foꝛ the evidences are as it were the ſinews of the land, and the feoffoꝛ being not bound to warranty, hath no uſe of them. But if the feoffoꝛ be bound to warranty, ſo that he is bound to render in value, then is the defence of the title at his peril, and therefoꝛe the feoffee in that caſe ſhall have no deeds that compꝛehend warranty, whereof the feoffoꝛ may take advantage. Alſo he ſhall have ſuch Charters as may ſerve him to deraigne the warranty paramount; Alſo he ſhall have all deeds and evidences, which are material foꝛ the maintenance of the title of the land, but other evidences which concern the poſſeſſion, and not the title of the land, the feoffee ſhall have them.

(m) 17 E. 3. 7. 43 E. 3. 33. b. Regiſt. 165. 10 H. H. 7. 21. Pl. Com. 191. 195. Bract. 211. 326.

(n) 45 E. 3. Vouchee 72. 33 E. 3. grant 102. 11 H. 6. 22. 27. 14. E 4. 4. 3. Aſs. p. 9. 3 E. 4. 19. 11 H. 7. 25.

(o) Lib. 1. fol. 1. & 2. in Scignior Buckhurſts caſe. 44 E. 3. 11. b. 39. E. 3. 17. 2 19 H 6. 65. b. 4. H. 6. 1. a. 10 E. 4. 9. b. 18 E. 4. 14 15. 6 H. 7. 3. b. 3 H. 7. 33. a.

¶ *Aver & tener.* Theſe two woꝛds do in this place pꝛove a double ſignification, viz. a Aver to have an eſtate of inheritance of lands deſcendible to his heirs, and Tener to hold the ſame of ſome ſuperioꝛ Lord.

There have been eight foꝛmal oꝛ oꝛderly parts of a deed of feoffment, viz. 1 the premiſſes of the deed implyed by Littleton. 2. the habendum whereof Littleton here ſpeaketh. 3. the tenendum mentioned by Littleton. 4. the Reddendum. 5. the Clauſe of warranty. 6. the In cujus rei teſtimonium, compꝛehending the ſealing. 7. The date of the deed containing the day, the month the year, and ſtile of the King, oꝛ of the year of our Lord. (p) Laſtly, the clauſe of his teſtibus: and yet all theſe parts were contained in very few and ſignificant woꝛds. (q) Hæc fuit candida illius ætatis fides & ſimplicitas, quæ pauculis lineis omnia fidei firmamenta poſuerunt.

Vide Sect. 40. & 370. 371. many things, de cartis & factis, Fleta lib. 3. cap. 14. Britton 100. 101. Bracton lib. 5. fol. 396. a. 299, 38 H 6. 32. 36. Pl. Com. Wrotteleyes caſe. fol. 96.

(p) Vide Throgmortons caſe. Pl. Com.

(q) Lib. 6. fol. 43. in Sir Anthony Mildmayes caſe, Vide ſect. 278.

The office of the premiſſes of the Deed is twofold. Firſt, rightly to name the feoffoꝛ and the feoffee. And ſecondly, to compꝛehend the certainty of the lands oꝛ tenements to be conveyed by the feoffment, either by expreſs woꝛds, oꝛ which may by reference be reduced to a certainty foꝛ Certum eſt quod certum reddi poteſt. The habendum hath alſo two parts, viz. firſt, to name again the feoffee, and ſecondly, to limit the certainty of the eſtate. The Tenendum at this day where the fee ſimple paſſes, muſt be of the chief Lords of the fee. And of the Reddendum moꝛe ſhall be ſaid in his pꝛoper place, in the Chapter of Rents. Of the Clauſe of warranty moꝛe ſhall be ſaid in the chapter of warranties. In cujus rei teſtimonum ſigillum meum appoſui was added; foꝛ the Seal is of the eſſential part of the deed. The date of the deed many times omitted, and the reaſon thereof was, Foꝛ that the limitation of pꝛeſcription, oꝛ time of memoꝛy, did often in pꝛoceſs of time change, and the law was then holden, that a deed, bearing date befoꝛe the limited time of pꝛeſcription, was not pleadable, and therefoꝛe they made their deeds without date, to the end they might alleage them within the time of pꝛeſcription. And the date of the deeds was commonly added in the reign of E. 2. and E. 3. and ſo ever ſince.

Brit. fol. 101.

(r) Lamb. expoſit. verb. terra ex ſcripto. Vide Forteſcue cap. 32. See the ſecond part of the Inſtitut. cap. 38. 12 E. 2. c. 2. ſee the ſecond part of the Inſtitutes. Marlbr. cap. 6. & cap. 14.

And ſometime Antiquity added a place, as Datum apud D. which was in diſadvantage of the feoffee, foꝛ being in general, he may alleage the deed to be made where he will. And laſtly, Antiquity did add, his teſtibus in the continent of the deed, after the In cujus rei teſtimonium, written with the ſame hand that the deed was, which witneſſes were called, the Deed read, and then their names entred. (r) And this is called charter land, and accoꝛdingly the Saxons called it Bockland, as it were book land. Which clauſe of his teſtibus in ſubjects deeds continued until and in the reign of H. 8. but now is wholly omitted. And it appeareth by the ancient Authoꝛs and Authoꝛities of the Law, that befoꝛe the Statute of 12. E. 2. cap. 2. Pꝛoceſs ſhould be awarded againſt the witneſſes named in the deed, teſtes in carta nominatos, (s) and that the ſame Statute was but an affirmance of the common Law, which not being well underſtood, hath cauſed variety of opinions in our books. But the delay therein was ſo great, and ſometimes (though rarely) by exceptions againſt thoſe witneſſes, which being found true, they were not to be ſwoꝛn at all, neither to be joyned to the Jury, noꝛ as Witneſſes, (t) as if the witneſs were infamous; foꝛ example, if he be attainted of a falſe veꝛdict, oꝛ of a conſpiracy at the

(s) Brit. fol. 65. 101. 11 E. 3. Proces 170. 6 H. 3. Proces 209. 8 H. 3. Proces 210. 4 E. 2. gard. 119.

(t) Mirrour. cap. 4. ſect. de Infamies & perjurie. Glanvil. lib. 2. cap. 15. Bract. lib. 3. 288. 292. Brit. fol. 134. 135. 101. Fleta lib. 5. cap. 21. 8 E. 2. Aſſ. 396. 2 E. 3. 22. 24 E. 3. 34.

ſunt of the king, or convicted of perjury, or of a Præmunire or of forgery upon the Statute of 5. Eliz. cap. 14. and not upon the Statute of 1 H. 5. cap. 3. or convict of felony, or by judgment loſt his ears, or ſtood upon the pillory or tumbrill, or been ſtigmaticus branded, or the like, whereby they become infamous for ſome offences. Quæ ſunt minoris culpæ ſunt majoris infamiæ. (c) If a Champion in Writ of right become recreant or coward, he thereby loſeth liberam legem, and thereby becomes infamous, & cannot be a witneſs, for regularly he that loſeth liberam legem, becommeth infamous, and can be no witneſs. Or if the witneſs be an Infidel, or of non ſane memorie, or not of diſcretion, or a party intereſſed, or the like. (d) But oftentimes a man may be challenged to be of a Jury, that cannot be challenged to be a Witneſs: and therefore though the Witneſs be of the neereſt alliance or kindred, or of counſel, or tenant, or ſervant to either party, (or any other exception that maketh him not infamous, or to want underſtanding or diſcretion, or a party in intereſt) though it be proved true, ſhall not exclude the witneſs to be ſworn, (e) but he ſhall be ſworn, and his credit upon the exceptions taken againſt him left to thoſe of the Jury, who are triers of the fact, inſomuch as ſome Books have ſaid, that though the witneſs named in the Deed be named a Diſſeiſor in the writ, yet he ſhall be ſworn as a witneſs to the deed. (f) A witneſs amongſt others named in a deed was outlawed, and no Proceſs was awarded againſt him by the Statute, becauſe he was extra legem, and an outlawed perſon cannot be an Auditor. And the Court in ſome books have ſaid, that they have not ſeen witneſſes challenged, which is regularly to be underſtood with the limitations above-ſaid, but ſuch as are returned to be of a Jury, are to be challenged for the cauſes aforeſaid for outlawry, & divers other cauſes (for the which a witneſs cannot be challenged) and ſuch Proceſs againſt witneſſes vaniſhed. But ſeeing the witneſſes named in a deed ſhall be joyned to the Inqueſt, and ſhall in ſome ſort joyn alſo in the verdict (in which caſe if Jury and Witneſſes find the Deed that is denied to be the Deed of the party, the adverſe party is barred of his attaint, becauſe there is no more than twelve that affirm the verdict.) It is reaſon that in that caſe of joyning, ſuch exceptio ſhall be taken againſt the witneſs as againſt one of the Jury, becauſe he is in the nature of a Juror. (a) And therefore to put one example, If he be outlawed in a perſonal action, he cannot be joyned to the Jury; but yet that is no exception againſt him, to exclude him to be ſworn as a Witneſs to the Jury. And the reaſon of all this, is, for that if he with others ſhould joyn in verdict with the Jury in affirmance of the Deed, the party ſhould be barred of his Attaint. But note, there muſt be more than one witneſs, that ſhall be joyned to the Inqueſt. And albeit they joyn with the Jury, and find it not his Deed, notwithſtanding this joyning, the party ſhall have his attaint, for it is a maxim in Law, (b) That Witneſſes cannot teſtifie a negative, but an affirmative. And if one of the witneſſes named in the Deed be one of the pannel, he ſhall be put out of the pannel, and all theſe ſecrets of Law do notably appear in our books.

To put up this point, It is to be known, (c) that when a trial is by witneſſes, regularly the affirmative ought to be proved by two or three witneſſes, as to prove a ſummons of the Tenant, or the challenge of a Juror, and the like. But when the trial is by verdict of 12. men, there the judgment is not given upon witneſſes, or other kind of evidence, but upon the verdict, and upon ſuch evidence as is given to the Jury they give their verdict. And Bracton ſaith, there is probatio duplex, viz. Viva, as by witneſſes, viva voce; & Mortua, as by deeds, writings, and inſtruments. And many times Juries, together with other matter, are much induced by preſumptions, whereof there be three ſorts, viz. violent, probable, and light or temerary. Violenta præſumptio is many times plena probatio, as if one be run thorow the body with a ſword in a houſe whereof he inſtantly dieth, and a man is ſeen to come out of that houſe with a bloody ſword, and no other man was at that time in the houſe. Præſumptio probabilis, moveth little, but, Præſumptio levis ſeu temeraria, moveth not at all. So it is in the caſe of a Charter of feoffment, if all the witneſſes to the Deed be dead (as no man can keep his witneſſes alive, and time weareth out all men) then violent preſumption, which ſtands for a proof, is continual and quiet poſſeſſion, for ex diuturnitate temporis omnia præſumuntur ſolenniter eſſe acta alſo the Dead may receive credit, per collationem ſigillorum, ſcripturæ, &c. &, Super fidem charrarum mortuis teſtibus erit ad patriam de neceſſitate currendum.

Note, it hath been reſolved by the Juſtices, that a wife cannot be produced either againſt or for her husband, quia ſunt duæ animæ in carne una, and it might be a cauſe of implacable diſcord and diſſenſion between the husband and the wife, and a mean of great inconvenience, but (d) in ſome caſes women are by Law wholly excluded to bear teſtimony, as to prove a man to be a Villein, Mulieres ad probationem ſtatus hominis admitti non debent. It was alſo agreed by the whole Court, (e) that in any information upon the Statute of Uſury, the party to the uſurious contract ſhall not be admitted to be a witneſs againſt the Uſurer, for in effect he ſhould be teſtis in propria cauſa, and ſhould avoid his own bonds and aſſurances, and diſcharge himſelf of the money borrowed, and though he commonly raiſe up an Informer to exhibit the Information, yet, in rei veritate, he is the party. And herewith in effect agreeth Brit-

43 E. 3. Conſpir. 11.
27. Aſſ. 59.
33. H. 6. 55 21. H. 6. 30.
(c) Forteſcu. cap. 26.
Par. 55 H. 3. m. 3.
Stanf. Pl. Cor. 174. a.

(d) Forteſcu. cap. 25.

(e) 22. Aſſ. 12. & 41.
23. Aſſ. 11.
19 E. 2. tit. Aſſ. 409.

(f) 34 E. 1. Proces. 208.

(a) 34 E. 1. tit. proces 208.
11. Aſſ. p. 19. 20. 12. Aſſ. p. 1. 12. 41. 18. Aſſ. p. 11.
22. Aſſ. 18. 23. Aſſ. 15.
40. Aſſ. 23. 48. Aſſ. p. 5.
21 H. 6. 30.

(b) 48 E. 3. 30. 12. H. 6. fo. 6. 2. 50. E. 3. 16. 43. E. 3. 32.
12. H. 4. 9. 19. E. 2. Aſſ. 408.
Paſch. 14. E. 3. coram rege Devon. in Theſaur.
Fleta. lib. 6. cap. 6.
F. N. B. 106. b. & 97. c.
( ) Mirrour cap. 3.
Pl. Com. fo. 10.
Bract. lib. 5. fo. 400.

Fleta lib. 6. cap. 33.
8 E. 3. 290. 39. E. 3. 21. b.

Glanvil. lib. 10. cap. 12.
Fleta lib. 6. cap 33.

Paſch. 10. Ja. in Com. Banco upon the ſtat. of Bankrouts.
(d) Fleta. lib. 2. cap. 44.
13 E. 1. tit. Vill. 36, 37.
19 E. 1. ibid. 32.
(e) Tr. 8. Ia. in Com. Banco. Smiths caſe.
In evidence upon an information upon the ſtatute of Uſury.
Brit fol. 134.

ton, that he that challengeth a right in the thing in demand, cannot be a witneſs, for that he is a party in intereſt. But now let us return to that from which by way of digreſſion (upon this occaſion) we are fallen.

And the ancient Charters of the King which paſſed away any franchiſe or revenue of any eſtate of inheritance, had ever this clauſe of his teſtibus, of the greateſt men of the Kingdom, as the Charters of creation of Nobility, yet have at this day: when his teſtibus was omitted, and when teſteme ipſo came in into the Kings grants, you ſhall read in the ſecond part of the Inſtitutes, Mag. Chart. cap. 38. I have termed the ſaid parts of the Deed, formal or orderly parts, for that they be not of the eſſence of a Deed of feoffment, for if ſuch a Deed be without præmiſes, habendum, tenendum, reddendum, clauſe of warranty, the clauſe of In cujus rei teſtimonium, the Date and the clauſe of his teſtibus, yet the Deed is good. (f) For if a man by Deed give lands to another and to his heirs, without more ſaying, this is good, if he put his Seal to the Deed, deliver it, and make livery accordingly. (g) So it is if A. give lands, to have and to hold, to B. and his heirs, this is good, albeit the Feoffee is not named in the premiſſes. And yet no well adviſed man will truſt to ſuch Deed which law by conſtruction maketh good ut res magis valeat, but when form and ſubſtance concur, then is the Deed fair and abſolutely good.

(f) Mirr. 6. cap. 1. ſect. 6. cap. 5. ſect. 1. Glanvil. lib. 10. cap. 12. Bract. lib. 5. fol. 396. Fet. li. 6. c. 32. Britt. f. 66.

(g) Vid. Tearms of the Law, verb. faits. Vid. Glanvil. lib. 10. c. 12. Mir. c. 1. ſect. 3. c. 3.

The ſealing of Charters and Deeds is much more ancient than ſome, out of errour, have imagined, for the Charter of the King Edwin, brother of King Edgar, bearing date Anno Domini, 956 made of the land called Jecklea in the Iſle of Ely, was not only ſealed with his own Seal (which appeareth by theſe words, Ego Edwinus gratia Dei totius Britannicæ telluris Rex meum donum proprio ſigillo meo confirmavi) but alſo the Biſhop of Wincheſter put to his Seal, Ego Ælfwinus Winton Eccleſiæ divinus ſpeculator proprium ſigillum impreſſi. And the Charter of King Offa, whereby he gave the Peter pence, doth yet remain under Seal. But no King of England, before or ſince the conqueſt, ſealed with any ſeal of Arms, before King R. 1. but the Seal was the King ſitting in a chair on the one ſide of the Seal, and on horſe back on the other ſide in divers forms. And King R. 1. ſealed with a Seal of two Lyons for the Conqueror for England bare two Lyons and King John in the right of Aquitain (the Duke whereof bare one Lyon) was the firſt that bare three Lyons, and made his Seal accordingly, and all the Kings ſince have followed him. And King E. 3. anno 13. of his reign, did quarter the Arms of France with his three Lyons, and took upon him the title of King of France, and all his Succeſſors have followed him therein.

In ancient Charters of feoffment there was never mention made of the delivery of the deed or any livery of ſeiſin indorſed, for certainly the witneſſes named in the Deed, were witneſſes of both: and witneſſes either of delivery of the deed, or of livery of ſeiſin by expreſs terms was but of later times, and the reaſon was in reſpect of the notoriety of the feoffment. And I have known ſome ancient deeds of feoffment having livery of ſeiſin indorſed ſuſpected, and after detected of forgery. So if a Deed in the ſtile of the King, name him Defenſor fidei before 13. H. 8. or Supreme Head before 20 H. 8. at what time he was firſt acknowledged ſupreme head by the Clergy, albeit the King uſed not ſtyle of Supreme head in his Charters, &c. till 22 H. 8. or King of Ireland, before 33. H. 8. at which time he aſſumed the title of the King of Ireland, being before that called Lord of Ireland, it is certainly forged, & ſic de ſimilibus.

21 H. 8. c. 2. 16.

And ſome have obſerved that Grace was attributed to King H. 4. Excellent Grace to King H. 6. Majeſty to King H. 8. and before, the King was called, Soveraign Lord, Leige Lord, Highneſs, and Kingly Highneſs, which in Latine in legal proceedings is called Regia Celſitudo, as the beginning of the petition of right to the King is, Humilimè ſupplicavit veſtræ Celſitudini regiæ, &c. and the like. And upon this occaſion it ſhall not be impertinent, ſeeing it is part of the formal Deed, to ſet down the ſeveral ſtiles of the Kings of England ſince the Conqueſt.

Vid. 2 H. 4. c. 15. where Royal Majeſty is attributed to the King, and Crimen læſæ Majeſtatis, is far more ancient.

William the Conqueror commonly ſtiled himſelf Willielmus Rex, and ſometimes Willielmus Rex Anglorum. And the like did William Rufus, and ſometimes Willielmus Dei gratia Rex Anglorum.

Henry the firſt, Henricus Rex Anglorum, and ſometimes Henricus Dei gratia Rex Anglorum.

Mawde the ſole Daughter and heir of H. 1. wrote, Matildis Imperatrix Henrici Regis filia & Anglorum Domina. Divers of whoſe creations and grants I have ſeen.

King Stephen uſed the ſtile that King H. 1. did.

Henry the 2. Fitz Emprice omitted Dei gratia, and uſed this ſtile, Henricus Rex Angliæ, Dux Normanniæ, & Aquitaniæ, & Comes Andegaviæ, he having the Dutchy of Aquitain, and Earldom of Poitiers in the right of Elianor his wife heir to both: And the Earldoms of Anjowe, Tournie, and Maine, as ſon and heir to Jeffery Plantagenet by the ſaid Mawde his wife, daughter and ſole heir of King H. 1. She was firſt married to Henry the Emperour, and after his death to the ſaid Jeffery Plantagenet. (Which Dutchy of Aquitain doth include Gaſcoign and Guien.

King R. 1. uſed the ſtile that H. 2. his father did, yet was he King of Cyprus, and after of Jeruſalem, but never uſed either of them.

King John uſed that ſtile, but with this addition Dominus Hiberniæ, and yet all that he had in Ireland was conquered by his father King H. 2. which title of Dominus Hiberniæ, he aſſumed as annexed to the Crown, albeit his father, in the 23. year of his reign, had created him King of Ireland in his life time.

King H 3. ſtiled himſelf as his father King John did, until the 44. year of his reign, and then he left out of his ſtile Dux Normaniæ, & Comes Andigaviæ, and wrote only Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ.

King E. 1. ſtiled himſelf in like manner as King H. 3. his father did, Rex Angliæ, Dominus Hiberniæ & Dux Aquitaniæ. And ſo did King E. 2. during all his reign. And King E 3. uſed the ſelf ſame ſtile until the 13. year of his reign, and then he ſtiled himſelf in this form, Edwardus Dei gratia Rex Angliæ, & Franciæ, & Dominus Hiberniæ, leaving out of his ſtile Dux Aquitaniæ, he was King of France, as ſon and heir of Iſabel wife of King E. 2. daughter and heir of Philip le Beau King of France, he firſt quartered the French Armories with the Engliſh in his great Seal, Anno Domini 1338. & regni ſui 14.

King R. 2. and King H. 4. uſed the ſame ſtile that King E. 3. did. And King H. 5. until the 8. year of his reign continued the ſame ſtile, and then wrote himſelf, Rex Angliæ, Hæres & Regens Franciæ, & Dominus Hiberniæ, and ſo continued during his life.

King H. 6. wrote, Henricus Dei gratia Rex Angliæ, & Franciæ, & Dominus Hiberniæ; this King being crowned in Paris King of France uſed the ſaid ſtile 39 years, till he was diſpoſſeſſed of the Crown by King E. 4. who after he had reigned alſo about ten years, King H. 6. was reſtored to the Crown again, and then wrote, Henricus Dei gratia Rex Angliæ & Franciæ, Dominus Hiberniæ ab inchoatione regni ſui 49. & recaptionis regiæ poteſtatis primo.

King E. 4. R. 3. and H. 7. ſtiled themſelves, Rex Angliæ & Franciæ, & Dominus Hiberniæ.

King H. 8. uſed the ſame ſtile till the tenth year of his reign, and then he added this word (Octavus) as Henricus octavus Dei gratia, &c. In the 13 year of his reign he added to his ſtile Fidei Defenſor. In the 22 year of his reign in the end of his ſtile he added Supremum Caput Eccleſiæ Anglicanæ. And in the 23 year of his reign he ſtiled himſelf thus, Henricus octavus Dei gratia Angliæ Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. & in terra Eccleſiæ Anglicanæ & Hiberniæ ſupremum caput.

Vid. Rot. Parliam. anno 1 H. 6. nu. 15. he was ſtiled Rex Franciæ & Angliæ & Dominus Hiberniæ.

King E. 6. uſed the ſame ſtile, and ſo did Queen Mary in the beginning of her reign, and by that name ſummoned her firſt Parliament, but ſoon after omitted Supremum Caput. And after her marriage with King Philip the ſtile notwithſtanding that omiſſion was the longeſt that ever was, viz. Philip and Mary by the Grace of God King and Queen of England and France, Naples, Jeruſalem and Ireland, Defenders of the Faith, Princes of Spain and Cicily, Archdukes of Auſtria, Dukes of Millain, Burgundy and Brabant, Countees of Hasburgh, Flanders and Tyrol. And this ſtile continued till the fourth and fifth year of King Philip and Queen Mary and then Naples was put out, and in place thereof both the Cicilies put in, and ſo it continued all the life of Queen Mary.

I need not mention the ſtile of Queen Elizabeth, King James, nor of our Soveraign Lord King Charls, becauſe they are ſo well known, and I fear I have been too long concerning this point, which certainly is not unneceſſary to be known for many reſpects. But to ſhew the cauſes and reaſons of theſe alterations would ask a Treatiſe of it ſelf, and doth not ſort to the end that I have aimed at. And now let us return to the learning of Charters and Deeds of Feoffments and Grants.

Livery of ſeiſin incident to a feoffment. Vid. ſect. 59.

Very neceſſary it is that Witneſſes ſhould be underwritten or indorſed, for the better ſtrengthning of Deeds and their names (if they can write) written with their own hands. For Livery of ſeiſin See hereafter, Sect. 59. and for Deeds, Sect. 66. and of Conditional Deeds, ſee our Author in his Chapter of Conditions. And now let us proceed to the other words of our Author.

Mirr. ca. 2. ſect. 15. Bract. lib. 2. fol. 62. b. Flet. lib. 6. cap. 1. & 54. & lib. 1. cap. 13. Glanvil. lib. 7. cap. 1. & cap. 12, & 13.

¶ *A luy & a ſes heires.* Hæres, in the legal underſtanding of the Common Law, implyeth that he is ex juſtis nuptiis procreatus, for hæres legitimus eſt quem nuptiæ demonſtrant, and is he to whom lands, tenements, or hereditaments by the act of God and right of blood do deſcend of ſome eſtate of inheritance, for Solus Deus hæredem facere poteſt non homo: dicuntur autem hæreditas & hæres ab hærendo, quod eſt arctè inſidendo, nam qui hæres eſt, hæret, vel dicitur ab hærendo quia hæreditas ſibi hæret, licet nonnulli hæredem dictum velint quod hærus ſuit, hoc eſt dominus terrarum, &c. quæ ad eum perveniunt.

(a) Bract. lib. 5. fol. 437, 438. Britt. cap. 66. fol. 167. & cap. 83. Fleta lib. 1. cap. 5.

A monſter which hath not the ſhape of mankind, cannot be heir or inherit any land, albeit it be brought forth within marriage, (a) but although he hath deformity in any part of his body yet if he hath humane ſhape he may be heir. Hi qui contra formam humani generis converſo more procreantur, ut ſi mulier monſtroſum, vel prodigioſum enixa, inter liberos non computentur, partus tamen cui natura aliquantulum ampliaverit vel diminuerit, non tamen ſuperabundanter (ut ſi ſex digitos vel niſi quatuor habuerit) bene debet inter liberos connumerari;

Si inutilia natura reddidit, ut ſi membra tortuoſa habuerit, non tamen is partus monſtroſus. Another ſaith. Ampliatio ſeu diminutio membrorum non nocet. (b) A baſtard cannot be heir, for (as hath been ſaid before) qui ex damnato coitu naſcuntur inter liberos non computentur. Every heir is either a male, or female, or an Hermaphrodite, that is, both male and female. And an Hermaphrodite (which is alſo called Androgynus) ſhall be heir, either as male or female, according to that kind of the ſex which doth prevail. Hermaphrodita, tam maſculo, quam fœminæ comparatur ſecundum prævaleſcentiam ſexus incaleſcentis. And accordingly it ought to be baptized. See more of this matter, Sect. 35.

b) Vid. ſect. 118.399. Bract.lib.2. fol.92. Brit. fo. Fleta lib.1. ca.5. & l.6. c.8. Fleta ubi ſupra. 3 R.2. Entr. cong.38.

(c) A man ſeiſed of lands in fee hath iſſue an Alien that is born out of the Kings ligeance, he cannot be heir, propter defectum ſubjectionis, albeit he be born within lawful marriage. If made Denizen by the Kings Letters Patents, yet cannot he inherit to his father or any other. But otherwiſe it is if he be naturalized by Act of Parliament, for then he is not accounted in Law Alienigena, but Indigena. But after one be made Denizen, the iſſue that he hath afterwards ſhall be heir to him but no iſſue that he had before. If an Alien cometh into England and hath iſſue two ſons, theſe two ſons are Indigenæ ſubjects born, becauſe they are born within the Realm. And yet if one of them purchaſe lands in fee, and dieth without iſſue, his brother ſhall not be his heir, for there was never any inheritable blood between the father and them, and where the ſons by no poſſibility can be heir to the father, the one of them ſhall not be heir to the other. See more at large of this matter, Sect. 198.

c) Mirror. ca.1. ca.2. ſect.ca.5. ſect. Bract.l.5. fol. 415.127. Brit. fo.27. Fleta lib.6.ca.47. 13 E.3.br.677. 25 E.3. de natis ultra mare. 31 E.3. Coſinage 5. 42 E.3.2. 11 H.4.26. 14 H.4.19,20. 3 H.6.55. 22 H.6.38.9 E. 4.7. lib.7. fo.1.in Calvins caſe.

If a man be attainted of treaſon, or felony, although he be born within wedlock, he can be heir to no man, nor any man heir to him propter delictum, for that by his attainder his blood is corrupted. And this corruption of blood is ſo high, as it cannot abſolutely be ſalved, and reſtored but by act of Parliament, for albeit the perſon attainted obtain his Charter of pardon, yet that doth not make any to be heir whoſe blood was corrupted at the time of the attainder, either downward or upward. (d) As if a man hath iſſue a ſon before his attainder, and obtaineth his pardon, and after the pardon hath iſſue another ſon, at the time of the attainder, the blood of the eldeſt was corrupted, and therefore he cannot be heir. But if he dye living his father, the younger ſon ſhall be heir, for he was not in eſſe at the time of the attainder, and the pardon reſtored the blood as to all iſſues begotten afterwards. But in that caſe if the eldeſt ſon had ſurvived the father, the younger ſon cannot be heir, becauſe he hath an elder brother which by poſſibility might have inherited, but if the elder brother had been an Alien, the younger ſon ſhould be heir, for that the Alien never had any inheritable blood in him. See more plentifully of this matter, Sect. 646, 647.

1 E.3.4.6 E. 3.55. 27 E.3. 77. 3 E. 2. diſcent. br. 64. 31 E.1. diſcent. 17. 46 E. 3. Petition 29. 26 Aſſ.p.2. 49 Aſſ.p.4.29 Aſſ. p.11. 9 H 5.9. d) Stanf. pl.cor. 195,196. Bracton lib.3. fo.132. 133.276. & lib.5.fo.374. Britton fo.215. b. Fleta lib.1. ca.28.

If a man hath iſſue two ſons, and after is attainted of treaſon, or felony, and one of the ſons purchaſe lands and dieth without iſſue, the other brother ſhall be his heir, for the attainder of the father corrupteth the lineal blood only and not the collateral blood between the brethren, which was veſted in them before the attainder, and each of them by poſſibility might have been heir to the father, and ſo hath it been adjudged, (*) but otherwiſe in the caſe of the Alienee, as hath been ſaid. (e) But ſome have holden that if a man after he be attainted of treaſon or felony have iſſue two ſons, that the one of them cannot be heir to the other, becauſe they could not be heir to the father, for that they never had any inheritable blood in them.

*) In the Exchequer Mic. 40. & 41 Eliz. in the caſe de Hobby.
e) Bract. lib.30. fol.130. Britton fol. 15. Fleta lib.1. cap.58.

(f) One that is born deaf and dumb may be heir to another, albeit it was otherwiſe holden in ancient time. And ſo if born deaf, dumb and blind, for in hoc caſu, vitio parcitur naturali, but contract they cannot. Ideots, lepers, mad men, outlaws in debt, treſpaſſers, or the like, perſons excommunicated, men attainted in a Præmunire, or convicted of hereſy may be heirs.

f) Bract.lib.5. 421. 420.424. lib.2. fol.12. Fleta lib.9. ca 39.47. 14 H 3. Bre. 877.32 E.3. Age 8.10 E.3. 536. 18 E.3.53.13 E.3. Ley 49.

(g) If a man hath a wife, and dieth, and within a very ſhort time after the wife marrieth again, and within nine moneths hath a child, ſo as it may be the child of the one or the other. Some have ſaid, That in this caſe the child may chuſe his father, quia in hoc caſu filiatio non poteſt probari, and ſo is the Book to be intended, for avoiding of which queſtion and other inconveniencies, this was the Law before the Conqueſt. Sit omnis vidua ſine marito duodecem menſibus, & ſi maritaverit perdat dotem.

g) 21 E.3.39. Pancirollus nova rep. 485,&c. Opus eximium 48 b Lambard de priſcis Anglorum legibus 120.72, acc.

(h) A man by the Common Law cannot be heir to goods or Chattels, for hæres dicitur ab hæreditate. (i) If a man buy divers fiſhes, as Carps, Breams, Tenches, &c. and put them in his Pond, and dyeth, in this caſe the heir ſhall have them, and not the Executors, but they ſhall go with the inheritance, becauſe they were at liberty and could not be gotten without induſtry, as by nets, and other engines, otherwiſe it is if they were in a trunk or the like. Likewiſe Deer in a Park, Coneys in a Warren, and Doves in a Dove-houſe, young and old ſhall go to the heir. (k) But of ancient time the heir was permitted to have an Action of debt upon a bond made to his Anceſtor and his heirs, but the Law is not ſo holden at this day. Vid. Sect.12.

h) Bract.lib.4. ca.9. fol.265. lib.4. fo.62.b. Fleta lib.6.ca.1. Lib.8.fo.54. Syms caſe.
i) Mich. 36. & 37 El. Rot.25. Inter Gray & Paulet in the Kings Bench. Stanford 25. b.18 E.4.8. 22 Aſſ.25.18 H.8.2.
k) 13 E.1. det 315. 139,140. 47 E.3.23.25 E.1.fol.48. 26 E. 3. fo.

(l) It is to be noted that one cannot be heir till after the death of his Anceſtor, he is called hæres apparens, heir apparant.

Vid. for an heire-lome. hæreditarium or principalis, ſect.12.
l) Mirror ca.1. ſect.3.

In our old Books and Records there is mention made of another heir, viz. hæres aſtrarius, ſo called of Aſtre, that is, an harth of a houſe, becauſe the Anceſtor by conveyance hath ſet his heir apparant, and his family in a houſe and living in his life time, of whom Bracton ſaith thus, (a) Item eſto quod hæres ſit aſtrarius, vel quod aliquis anteceſſor reſtituat hæredi in vita ſua hæreditatem, & ſe dimiſerit, videtur quod nullo tempore jacebit hæreditas, & ideo quod nec relevari poſſit, nec debet, nec relevium dari. (b) For the benefit and ſafety of right heirs contra partus ſuppoſites, the Law hath provided remedy by the Writ De ventre inſpiciendo, whereof the rule in the Regiſter is this; Nota ſi quis habens hæreditatem duxerit aliquam in uxorem & poſtea moriatur ille ſine hærede de corpore ſuo exeunte, per quod hæreditas illa tratri ipſius defuncti deſcendere debeat, & uxor dicit ſe eſſe pregnantem de ipſo defuncto cum non ſit, habeat frater, & hæres breve de ventre inſpiciendo. It ſeemeth by Bracton and Fleta which followed him, that this Writ doth lye, Ubi uxor alicujus in vita viri ſui ſe pregnantem fecit cum non ſit, vel poſt mortem viri ſui ſe pregnantem fecit cum non ſit ad exhæredationem veri hæredis, &c. ad quærelam veri hæredis per præceptum domini regis, &c which is to be underſtood according to the rule of the Regiſter: when a man having lands in Fee ſimple dieth, and his wife ſoon after marrieth again, and feigns her ſelf with child by her former husband, in this caſe though ſhe be married, the Writ De ventre inſpiciendo doth lye for the heir. But if a man ſeiſed of lands in fee (for example) hath iſſue a daughter, who is heir apparant, ſhe in the life of her father cannot have this writ for divers cauſes; firſt, becauſe ſhe is not heir, but heir apparant, for as hath been ſaid, nemo eſt hæres viventis, and this Writ is given to the heir to whom the land is deſcended. And both Bracton and Fleta ſaith, that this Writ lieth Ad querelam veri hæredis, which cannot be in the life of his Anceſtor, and herewith agreeth Britton and the Regiſter. Secondly, the taking of a husband in the caſe aforeſaid being her own act, cannot bar the heir of his lawful Action once veſted in him. Thirdly, the Law doth not give the heir apparant any Writ, for it is not certain whether he ſhall be heir, ſolus Deus facit hæredes. Fourthly, the inconvenience were too great if heirs apparant in the life of their Anceſtor ſhould have ſuch a Writ to examine and try a mans lawful wife in ſuch ſort as the Writ De ventre inſpiciendo doth appoint, and if ſhe ſhould be found to be with child, or ſuſpect, then ſhe muſt be removed to a Caſtle and there ſafely kept until her delivery, and ſo any mans wife might be taken from him againſt the Laws of God and man.

The words of the Writ De ventre inſpiciendo make this evident. Rex Vic. ſalutem, monſtravit nobis A. quod cum R. *quæ fuit uxor Clementis* B. prægnans non ſit, ipſa falsò dicit ſe eſſe prægnantem de eodem Clemente, *ad exhæredationem* ipſius A. deſicut terra quæ fuit ejuſdem C. *ad ipſum A jure hæreditario deſcendere debeat* tanquam *ad fratrem & hæredem* ipſius C. ſi prædict. R. prolem de eo non habuerit, &c. But this rather belongs to the Treatiſe of original Writs, and therefore thus much herein ſhall ſuffice.

And it is to be obſerved that every word of Littleton is worthy of obſervation, firſt, (Heirs) in the plural number, for if a man give land to a man and to his heir in the ſingular number, he hath but an eſtate for life, for his heir cannot take a Fee ſimple by deſcent, becauſe he is but one, and therefore in that caſe his heir ſhall take nothing. Alſo obſervable is this conjunctive (Et,) For if a man give lands to one, To have and to hold to him or his heirs, he hath but an eſtate for life for the uncertainty (Ses ſuis) If a man give land unto two, To have and to hold to them two & hæredibus (c) omitting ſuis, they have but an eſtate for life for the uncertainty, whereof more hereafter in this Section. But it is ſaid, if land be given to one man, & hæredibus, omitting ſuis, that notwithſtanding a Fee ſimple paſſeth, but it is ſafe to follow Littleton.

¶ (d) *Et ſes aſſignes.* Aſſignæ cometh of the verb Aſſigno. And note there be Aſſigns in Deed, and Aſſigns in Law, whereof ſee more in the Chapter of Warranty, Sect. 733.

¶ *Ceux parolx (ſes heires) tantſolement font leſtate denheritance en touts feoffments & grants.* (e) Si autem facta eſſet donatio, ut ſi dicam, do tibi talem terram, iſta donatio non extendit ad hæredes ſed ad vitam donatoris, &c. (f) Here Littleton treateth of purchaſes by natural perſons, and not of Bodies politique or corporate; (g) for if lands be given to a ſole Body politique or corporate, (as to a Biſhop, Parſon, Vicar, Maſter of an Hoſpital, &c.) there to give him an eſtate of inheritance in his politick or corporate capacity, he muſt have theſe words, To have and to hold to him and his ſucceſſors, for without theſe words Succeſſors, in thoſe caſes there paſſeth no inheritance, for as the heir doth inherit to the Anceſtor, ſo the Succeſſor doth ſucceed to the Predeceſſor, and the Executor to the Teſtator. (h) But it appeareth here by Littleton, that if a man at this day give lands to I. S. and his Succeſſors, this createth no Fee ſimple in him, for Littleton ſpeaking of natural perſons ſaith that theſe words (his heirs) make an eſtate of inheritance in all Feoffments and Grants whereby he excludeth theſe words (his ſucceſſors.) (i) And yet if it be an ancient grant it muſt be expounded as the Law was taken at the time of the grant. (k) A Chantry Prieſt incorporate took a Leaſe to him

(a) Bract. lib. 2. fo. 85. Heref. p. 8. E. 1. Ro. 80. de Banco. Mirror cap. 2. ſect. 18. Britton 151. b.
(b) Regiſtr. fo. 227. Bracton lib. 2. fo. 69. Britton fol. 165. Fleta lib. 1. ca. 14.

Britton. fo. 165. b. Regiſt. ubi ſupra.

Vid. Bracton, Britton & Fleta ubi ſupra. Regiſt. ubi ſupra. Bracton and Fleta ubi ſupra have (ad exhæredationem.)

(c) 10 H. 6. 7. 22 H. 6. 15. Pl. Com. 28. b. 22 E. 4. 16. 2 H. 4. 13. 20 E 3. br. 377.
(d) Lib. 5. fo. 96, 97. Britt. fol. 28 H. 8. Dyer. Pl. Com. 287. 288.
(e) Bract. lib. 2. ca. 39. fo. 92. b. Br. ca. 39. fo. 99. b. Fleta lib. 6. ca. 1, 2. & lib. 3. cap. 2. 20 H. 6. 35, 36. 19 H. 6. 17. 22. 74. 22 E. 4. 16. b. 4 E. 6. Pl. Com. 26.
(f) Vid. ſect. 413.
(g) 7 E. 3. 25. Vid. ſect. 686. 25 E. 3. 35. Bract. lib. 2. fo. 82. b. Vid. ſect. 413.
(h) Pl. Com. 242. Seignior Berkleyes caſe.
(i) Vid. Britt. fo. 86. 121. & 130. 17 E. 3. 25. b. 33 H. 6. 22. 10 H. 7. 13, 14. 9 H. 7. 11. 16 H. 7. 9. 15 E. 4. 13, 14 H. 6. 12. 35 H. 6. 54. 24 Aſſ. 14. 40 Aſſ. 21. Tr. 5 E. 3. Rot. 4. in Scaccario. 3 E. 3. 32. 7 E. 3. 40. 11 H. 4. 84. 12 H. 4. 12. 18 E. 2. Conuſans 39. b. 9 E. 4. 181. 38 E. 3. 34. Lib. 9. fo. 28. in Caſe de Abb. de Strata Marcella.

him and his ſucceſſors for a hundred years, and after took a releaſe from the Lessor to him and his ſucceſſors, and it was adjudged that by the releaſe he had but an eſtate for life, for he had the Leaſe in his natural capacity for it could not go in ſucceſſion, and (his ſucceſſors) gave him no eſtate of inheritance for want of theſe words (his heirs.) (l) If the King by his Letters Patents giveth lands Decano & Capitulo, habendum ſibi & hæredibus & ſucceſſoribus ſuis, In this caſe albeit they be perſons in their natural capacity to them and their heirs, yet becauſe the Grant is made to them in their politique capacity, it ſhall enure to them and their ſucceſſors. And ſo if the King do grant lands to I. S. Habendum ſibi & ſucceſſoribus ſive hæredibus ſuis, this Grant ſhall enure to him and his heirs.

(k) Hill. 21 Eliz. Dyers Manuſcript, inter Anſley and Johnſon in Com. Banco.
(l) 18 H.6.11. b. &c. adjudge.

(m) B. having divers ſons and daughters, A. giveth lands to B. & liberis ſuis, & a four heires, the father and all his children do take a Fee ſimple jointly by force of theſe words (their heirs) but if he had no child at the time of the feoffment the child born afterward ſhall not take.

(m) 15 E.3. tit. Counterplea, de Voucher 43. 37 H.6.30. 11. E. 4. 2.

Theſe words (his heirs) do not only extend to his immediate heirs, but to his heirs remote) and moſt remote, born and to be born (n) Sub quibus vocabulis (hæredibus ſuis) omnes hæredes propinqui comprehenduntur, & remoti, nati & naſcituri. And hæredum appellatione veniunt hæredes hæredum in infinitum. And the reaſon wherefore the Law is ſo preciſe to preſcribe certain words to create an eſtate of inheritance, is for avoiding of uncertainty, the mother of contention and confuſion.

(n) Fleta lib.3. cap. 8. Pl. Com. 163.

There be many words ſo appropriated, as that they cannot be legally expreſſed by any other word or by any periphraſis, or circumlocution: Some to eſtates of lands, &c. as here and in (a) other places of our Author. In this place theſe words tantſolement, not ſolement alone, but tantſolement all only i. ſolummodo, or duntaxat are to be obſerved; (b) Some to Tenures (c) Some to perſons; (d) Some to offences; (e) Some to forms of original writs either for recovery of right, or removing, or redreſs of wrong. (f) Some to warranty of land. Theſe have I touched for examples. I leave others to the ſtudious Reader to obſerve and add, holding this for an undoubted verity, that there is no knowledg, caſe, or point in Law, ſeem it of never ſo little account, but will ſtand our Student in ſtead at one time or other, and therefore in reading nothing to be pretermitted.

(a) Sect. 17. 62. 133.
(b) Sect. 156. 161.
(c) Sect. 184.
(d) Sect. 190. 194. 746.
(e) Sect. 9. 67. 194. 204. 234. 236. 241. 405. 485. 478. 651. 655. 646. 620. 614. 637. 674. 692.
(f) Sect. 733.

¶ *Font leſtate.* Status dicitur à ſtando, becauſe it is fixed and permanent. The Iſle of Man, which is no part of the Kingdom, but a diſtinct Territory of it ſelf, hath been granted by the great Seal to divers ſubjects and their heirs. (g) It was reſolved by the Lord Chancellor, the two chief Juſtices, and chief Baron, that the ſame is an eſtate deſcendible according to the courſe of the Common Law, for whatſoever ſtate of inheritance paſs under the great Seal of England, it ſhall be deſcendible according to the rules, and courſe of the Common Law of England.

(g) Tr. 40. Eliz. in le Counte de Derbyes caſe, by the Lord Chancellor, les 2. chief Juſtices, and Chief Baron.

¶ *En touts feoffments & grants.* Here he giveth the Feoffment the firſt place, as the ancient and moſt neceſſary conveyance, both for that it is ſolemn and publick, and therefore beſt remembred and proved, (g) and alſo for that it clearreth all diſſeiſins, abatements, intruſions, and other wrongful or defeaſible eſtates, where the entry of the Feoffor is lawful, which neither Fine, Recovery, nor Bargain and ſale by Deed indented and inrolled doth. And here is implyed a diviſion of Fee, or Inheritance, viz. (h) into corporeal (as Lands and Tenements which lye in Livery) comprehended in this word Feoffment, and may paſs by Livery by Deed, or without Deed, which of ſome is called Hæreditas corporata, and incorporeal, (which lye in Grant, and cannot paſs by Livery but by Deed, (as Advowſons, Commons, &c. and of ſome is called Hæreditas incorporata) and by the delivery of the Deed, the Freehold, and Inheritance of ſuch Inheritance, as doth lye in Grant, doth paſs) comprehended in this word Grant. And the Deed of incorporate inheritances doth equal the Livery of corporeate. And therefore Littleton ſaith, in all Feoffments and Grants, Hæreditas alia corporalis, alia incorporalis; Corporalis eſt, quæ tangi poteſt & videri; incorporalis, quæ tangi non poteſt, nec videri.

(g) Vide ſect. 59. & 66.
(h) Mirrour c. 2. ſect. 15. & cap. 5. ſect. 1. Bracton lib. 2. fol. 53. 366. 368. Fleta, lib. 3. cap. 1. 2. 15. Britton 84. 87. 2 & fol. 63. 101, 102, 141, 142, agreeth herewith. Pl. Com. 171. Hill & Orange.

Mirrour cap. 5. Sect. 1. Britton, cap. 34.

Feoffment is derived of the word of Art Feodum, quia eſt donatio feodi, for the ancient Writers of the Law called a feoffment donatio of the verb do or dedi, which is the aptreſt word of feoffment. And that word Ephron uſed * when he enfeoffed Abraham, ſaying, I give thee the field of Machpelah *over againſt* Mamre, and the Cave therein I give thee, and all the trees in the field and the borders round about, all which were made ſure unto Abraham for a poſſeſſion, in the preſence of many witneſſes.

For the Antiquity of Feoffment, ſee the ſecond Part of the Inſtitutes, Marlebridge c. 9. 8 E.3. 24. 18 H.6. 24. 39 H.6. 39.
* Geneſis 23.
* Vide Sect. 57.
Britton, cap. 34.
44 E.3. 41.
See more of feoffments, ſect. 60. See of factum. ſect. 259.

By a feoffment the corporeate fee is conveyed, and it properly betokeneth a conveyance in fee as our Author himſelf hereafter ſaith, * in his Chapter of Tenant for life. And yet ſometime improperly it is called a feoffment when an eſtate of freehold only doth paſs. Done eſt noſme generall plus que neſt feoffment, car done eſt generall a tous choſes moebles & nient moebles, feoffment eſt riens forſque del ſoyle. And note there is a difference inter factum & factum, for

carta is intended a Charter which doth touch inheritance, and ſo is not factum unleſs it hath ſome other addition.

Lib. 3. f. 63. in Lincoln College caſe.

Grant Conceſſio, is properly of things incorporeal, which (as hath been ſaid) cannot paſs without deed. And here it is to be obſerved (that I may ſpeak once for all) that every period of our Author in all his three Books contains matter of excellent learning, neceſſarily to be collected by implication, or conſequence, for example, he ſaith here, that theſe words (his heirs) make an eſtate of inheritance in all feoffments and grants, he expreſſing feoffments & grants, neceſſarily implyeth, that this rule extendeth not, firſt, to laſt Wills and Teſtaments for thereby (i) as he himſelf after ſaith, an eſtate of inheritance may paſs without theſe words (his heirs.)

(i) Litt. lib. 3. c. de Attorn. ſect. 5. 8. 6. 4 E. 6. Eſtates Br. 78. 29 H. 8. Teſtaments 18. 22 Eliz. Dier 371. Temps H. 8. tit. Conſcience Br. 25.

(k) If a man devile 10 acres to another, and that he ſhall pay to his Executors, for the ſame ten pound, hereby the Deviſee hath a Fee ſimple by the intent of the Deviſor, albeit it be not to the value of the land. (l) So it is if a man devile lands to a man in perpetuum, or to give and to ſell, or in feodo ſimplici, or to him, and to his aſſigns for ever. In theſe caſes a Fee ſimple doth paſs by the intent of the Deviſor, but if the devile be to a man and his aſſigns without ſaying (for ever) the Deviſee hath but an eſtate for life. (m) If a man devile land to one & Sanguini ſuo, that is a Fee ſimple, but if it be Semini ſuo, it is an eſtate tail.

(k) 21 E. 3. 16. 34 H. 6, 7. 19 H. 8. 9. lib. 3. fo. 21. in Borafton caſe lib. 6. f. 16, 17. lib. 10. fo. 67.

(l) Vide ſect. 585.

(m) Mich. 40. & 41 Eliz. in Error. Int. Downhal & Catesby adjudge. Brook tit. tail 21.

(n) Secondly, that it extendeth not to a Fine ſur conuſans de droit come ceo &c. ſued and ſo done, by which a Fee alſo may paſs without this word (heirs) in reſpect of the [illegible] that fine and that thereby is implyed that there was a precedent gift in fee.

(n) Lib. 1. fo. 100. Shelleyes caſe 42 E. 3. 7. 19 H. 6. 17. b. 22. b. Pl. Com. 248.

Thirdly, not to certain Releaſes and that three manner of ways, (o) firſt when an eſtate of inheritance paſſeth and continueth as if there be three coparceners or Joynt-tenants, and one of them releaſe to the other two, or to one of them generally without this word (heirs) by Littletons own opinion they have a Fee ſimple as appeareth hereafter. 2. By releaſe (p) when an eſtate of inheritance paſſeth and continueth not, but is extinguiſhed, as where the Lord releaſes to the Tenant, or the Grantee of a rent, &c. releaſe to the Tenant of the land generally all his right, &c. hereby the Seignory, rent, &c. are extinguiſhed for ever without theſe words (his heirs.) 3. (q) When a bare right is releaſed, as when the Diſſeiſee releaſe to the Diſſeiſor all his right, he need not (ſaith our Author in another place) ſpeak of his heirs. But of all theſe, and the like caſes, more ſhall be treated in their proper places. 4. Nor to a Recovery, A. ſeiſed of land ſuffereth B. to recover the land againſt him by a common recovery where the judgment is quod prædictus B. recuperet verſus prædict' A. Tenementa prædicta cum pertinen, yet B. recovereth a Fee ſimple without theſe words (heirs) for regularly every Recoveror recovereth a Fee ſimple. 5. Nor to a creation of Nobility by Writ, for when a man is called to the Upper Houſe of Parliament by Writ he is a Baron and hath inheritance therein without the word (heirs) yet may the King limit the general ſtate of inheritance created by the Law, and Cuſtom of the Realm to the heirs male, or general, of his body by the Writ, as he did to Bromfleete who in 27 H. 6. was called to Parliament by the name of the Lo: Veſcye, &c. with the limitation in the Writ to him and the heirs males of his body, but if he be created by Patent, he muſt of neceſſity have theſe words (his heirs) or the heirs males of his body, or the heirs of his body &c. otherwiſe he hath no inheritance. The firſt creation of a Baron by patent that I find was of John Beuchampe of Holt, created Baron by patent in 11 R. 2. for Barons before that time were called by Writ. And it is to be obſerved that of ancient times Earls, &c. were created by girding them with a ſword, and nominating him Earl, &c. of ſuch a County or place, and this with a calling of him to Parliament by Writ by that name was a ſufficient creation of inheritance.

(o) Litt. lib. 2. ca. Tenant in common. ſect. 304, 305. cap. Attorn. ſect. 374. Dier 9 Eliz. 263.

(p) Litt. lib. 3. c. Releaſes ſect. 479, 480. 20 H. 6. 17. 19 H. 6. 17. 22.

(q) Litt. cap. Releaſes. ſect. 467.

27 H. 6. Lo. Veſcies caſe.

But out of this rule of our Author, the Law doth make divers exceptions (Et exceptio probat regulam) for ſometime by a Feoffment a Fee ſimple ſhall paſs without theſe words (his heirs) For example, firſt (r) if the father enfeoff the ſon, To have and hold to him and to his heirs, & the ſon enfeoffeth the father as fully as the father enfeoffed him, by this the father hath a fee ſimple, quia verba relata hoc maximè operantur per referentiam ut in eſſe videntur. (ſ) Secondly, in reſpect of the conſideration, a fee ſimple had paſſed at the Common Law without this word (heirs) & at this day an eſtate of inheritance in tail, as if a man had given land to a man with his daughter in frankmarriage generally, a fee ſimple had paſſed without this word (heirs) for there is no conſideration ſo much reſpected in law, as the conſideration of marriage in reſpect of aliance and poſterity. (t) Thirdly, if a Feoffment or Grant be made by Deed to a Major and Communalty or any other Corporation aggregate of many perſons capable, they have a fee ſimple without the word (Succeſſors) becauſe in judgment of the Law they never dye. (u) Fourthly, in caſe of a ſole Corporation a fee ſimple ſhall ſometime paſs without this word (Succeſſors) as if a feoffment in fee be made of land to a Biſhop. To have and to hold to him in libera eleemoſyna, a fee ſimple doth paſs without this word (Succeſſors.) (w) And ſo if a man give lands to the King by deed inrolled, a fee ſimple doth paſs without theſe words (Succeſſors or heirs) becauſe in judgment of law the King never dieth. Fifthly, in Grants ſometimes an Inheritance ſhall paſs without this word (heirs) (x) as if partition be made between Coparceners of lands in fee ſimple, and for owelty of partition the one grant a rent to the

(r) 39 Aſſ. 12. 41 E. 3. tit. Feoffments & Faits 254. 14 H. 4. 13. 34 E. 3. Avowry 258.

(ſ) Vide ſect. 17. 12 H. 4. 19. in Formedon.

(t) 8 E. 3. 27. 11 H. 7. 12. 22 E. 4. 11 H. 4. 84. 2 H. 4. 13.

(u) 19 H. 6. 74. 20 H. 6. 36.

(w) Pl. Com. Lo. Berkleyes caſe.

(x) 29 Aſſ. 23. 15 H. 7. 14. 2 H. 7. 5. 11. H. 4. 3. 21 E. 3. 1. 21 Aſſ.

the other generally, the Grantee ſhall have a Fee ſimple without this word (heirs) becauſe the Grantor hath a Fee ſimple, in conſideration whereof, he granted the rent. Ipſæ enim leges cupiunt ut jure regantur. Sixthly, by the Foreſt Law, if an Aſſart be granted by the King at a Juſtice ſeat (which may be done without Charter) to another. Habendum & tenendum ſibi in perpetuum, he hath a Fee ſimple without this word (heirs) (y) for there is a ſpecial Law of the Foreſt, as there is a Law Marſhal for wars, and a Marine Law for the ſeas. (z) And this rule of our Author extendeth to the paſſing of eſtates of inheritances in exchanges, releaſes, or confirmations that enure by way of enlargement of eſtates, warranties, bargaine and ſales by Deed indented and inrolled, and the like, in which this word (heirs) is alſo neceſſary, for they do tant=amount to a feoffment or grant, or ſtand upon the ſame reaſon that a feoffment or grant doth: for like reaſon doth make like Law. Ubi eadem ratio, ibi idem jus. And this is to be obſerved throughout all theſe three Books, that where other caſes fall within the ſame reaſon, our Author doth put his caſe but for example: for ſo our Author himſelf in another place * explaineth it, ſaying, Et memorandum que en touts autres caſes coment que ne ſeint icy expreſſment moves & ſpecifies, ſi ſont en ſemblable reaſon ſont en emblable ley. And here our Author is to be underſtood to ſpeak of heirs when they are inheritable by deſcent, for they are capable of land alſo by purchaſe, and then the courſe of deſcent is ſometime altered, as if lands of the nature of Gavelkind be given to B. and his heirs having iſſue divers ſons, all his ſons after his decreaſe ſhall inherit; but if a leaſe for life be made, the remainder to the right heirs of B. and B. dieth, his eldeſt ſon only ſhall inherit, for he only to take by purchaſe is right heir by the Common Law. So note a diverſity between a purchaſe and deſcent, but where the remainder is limited to the right heirs of B. it need not be ſaid, and to their heirs for being plurally limited, it includeth a Fee ſimple, and yet it reſteth but in one by purchaſe.

(y) 40 H.7.7.
(z) 22 E.3.3.45. E.3.20. 9 E.3.21. Lib. 4. fo.121. Buſtards caſe. Vide Sect.465 469.619. 19 H.6.17.22. 17 E.2.gar.85.
(*) Sect. 301.

Out of that which hath been ſaid, it is to be obſerved, that a man may purchaſe lands to him and his heirs by ten manner of conveyances, (for I ſpeak not here of Eſtoppels.) Firſt, by Feoffment: Secondly, by Grant (of which two our Author here ſpeaketh.) Thirdly, by Fine, which is a Feoffment of record. Fourthly, by common Recovery, which is common conveyance, and is in nature of a feoffment of record. Fifthly, by Exchange, which is in nature of a Grant. Sixthly, by Releaſe to a particular Tenant. Seventhly, by Confirmation to a particular Tenant, both which are in nature of Grants. Eighthly, by Grant of a reverſion or remainder, with attornment of the particular Tenant, of all which our Author ſpeaketh hereafter. Ninthly, by bargain and ſale, by Deed indented and inrolled, ordained by Statute ſince Littleton wrote. Tenthly, by Deviſe, by Cuſtom of ſome particular place, as he ſheweth hereafter; and, ſince he wrote, by Will in writing, generally by authority of Parliament.

27 H.8. cap. 16.
32 H.8.cap.2.
34 H.8.cap.5.
Sect. 531.
37 Aſſ.p.8.38. Aſſ. p.9.
12 E.4.9. &c.

What words are apt words for a feoffment or Grant, vide Sect. 531. Our Author ſpeaketh of Feoffments, and Grants, whereby is implyed lawful conveyances; and therefore this rule extendeth not to Diſſeiſins, Abatements, or Intruſions into lands or tenements, or to uſurpations to Advowſons, &c. in which caſes eſtates in Fee ſimple are gained by the act & wrong of the Diſſeiſors, Abators, Intruders, and Uſurpers; and if a diſſeiſin, abatement, or intruſion be made to the uſe of another, *ſi cey que uſe agreeth thereunto in pays*, by this bare agreement he gaineth a Fee ſimple without any livery of ſeiſin, or other ceremony.

Sect. 2.

¶ ET ſi home purchaſe terres en Fee ſimple & deuy ſans iſſue cheſcun que eſt ſon prochein coſin collateral del entire ſanke, de quel pluis long degree que il ſoit, poit inheriter & aver ẽ la tre come heire a luy.

AND if a man purchaſe land in fee ſimple and dye without iſſue, he which is his next coſin collateral of the whole bloud, how farre ſo ever he be from him in degree, may inherit and have the land as heir to him.

¶ Littleton ſheweth here, who ſhall be heir to lands in Fee ſimple, for he intendeth not this caſe of an eſtate tail, for that he ſpeaketh of an heir of the whole bloud, for that extendeth not to eſtates in tail, as ſhall be ſaid hereafter in this Chapter, Sect. 6.

¶ *Prochein coſin collaterall.* Neither excludeth he brethren or ſiſters, becauſe he hath a ſpecial caſe concerning them in this Chapter, Sect. 5. and in his Chapter of Parceners: but this is intended where

where a man purchaſeth lands, and dieth without iſſue, and having neither brother nor ſiſter, then his next coſin collateral ſhall inherit. So as here is implyed a diviſion of heirs, viz. lineal (who ever ſhall firſt inherit) and collateral, (who are to inherit for default of lineal.) For in deſcents it is a maxime in Law, Quod linea recta ſemper præfertur tranſverſali. Lineal deſcent is conveyed downward in a right line, as from the grandfather to the father, from the father to the ſon, &c. Collateral deſcent is derived from the ſide of the lineal; as grandfathers brother, fathers brother, &c. Prochein couſin collateral enheritera, doth give a certain direction to the next coſin to the ſon, and therefore the fathers brother and his poſterity ſhall inherit before the grandfathers brother and his poſterity. Et ſic de cæteris, for propinquior excludit propinquum, & propinquus remotum, & remotus remotiorem.

Glanvil, lib. 7. cap. 3, 4. Bract. lib. 2. cap. 30. fol. 65. Britton, cap. 119. Fleta, lib. 6. cap. 1. & 2. Bract. lib. 2. cap. 30. fol. 64. Fleta, lib. 5. cap. 5. & lib. 6. cap. 1. & 2. Britton, cap. 119. Mirrour. 11. cap. 1. ſect. 3. 30 Aſſ. p. 47.

Upon this word (Procheir,) I put this caſe. One hath iſſue two ſons A. and B. and dieth, B. hath two ſons C. and D. and dieth C. the eldeſt ſon hath iſſue and dieth: A. purchaſeth lands in Fee ſimple and dieth without iſſue, D. is his next coſin, and yet ſhall not inherit but the iſſue of C. for he that is inheritable, is accounted in Law next of bloud: And therefore here is underſtood a diviſion of next, viz. next, jure repræſentationis, and next, jure propinquitatis, that is, by right of repreſentation, and by right of propinquity. And Littleton meaneth of the right of repreſentation, for legally in courſe of deſcents he is next of bloud inheritable. And the iſſue of C. doth repreſent the perſon of C. and if C. had lived, he had been legally next of bloud. And whenſoever the father, if he had lived, ſhould have inherited, his lineal heir by right of repreſentation, ſhall inherit before any other, though another be jure propinquitatis nearer of bloud. And therefore Littleton intendeth his caſe of next coſin of bloud, immediately inheritable. So as this produceth another diviſion of next of bloud, viz. immediately inheritable, as the iſſue of C. and mediately inheritable as D. if the iſſue of C. die without iſſue, for the iſſue of C. and all that live, be they never ſo remote, ſhall inherit before D. or his line, and therefore Littleton ſaith well, De quel pluis long degree, que il ſoit. And here ariſeth a diverſity in Law between next of bloud inheritable by deſcent, and next of bloud capable by purchaſe. And therefore in the caſe before mentioned, if a Leaſe for life were made to D. the remainder to his next of bloud in fee. In this caſe, as hath been ſaid, D. ſhall take the remainder, becauſe he is next of bloud and capable by purchaſe, though he be not legally next to take as heir by deſcent.

19 R. 2. tit. gar. 100.

30 Aſſ. p. 47.

Sect. 3.

¶ *Uncore le pere eſt plus prochein de ſanke.* And therefore ſome do hold upon theſe words of Littleton, That if a Leaſe for life were made to the ſon, the remainder to his next of bloud, that the father ſhould take the remainder by purchaſe, and not the uncle; for that Littleton ſaith, the father is next of bloud, and yet the uncle is heir. As if a man hath iſſue two ſons, and the eldeſt ſon hath iſſue a ſon and dye, a remainder is limited to the next of his bloud, the younger ſon ſhall take it, yet the other is his heir.

5 E. 6. tit. Adminiſtr. Br. 47. Ratcliffs caſe, ubi ſupra. See after in the Chapter of Socage.

¶ (p) *Eſt un Maxime en le Ley que enheritance poet linealment diſcender mes nemy aſcender.*

(p) Pl. Com. 293. b. Osborns caſe.

Maxime, i. A ſure foundation or ground of Art, and a

¶ Mes ſi ſoit pere & fits, & le pere ad un frere que eſt uncle a le fits, & le fits purchaſe tre en Fee ſimple, & moꝝ ſans iſſue vivāt ſon pere, uncle avera la tre come heire al fits & nemy le pere, uncore le pere eſt pluis prochein de ſanke, pur ceo que eſt un maxime en le ley, Que inheritāce poet linealment diſcender, mes nemy aſcender. Uncor ſi le fits & tiel caſe moꝝ ſans iſſue, & ſon uncle entra en la tre come heire a le fits

But if there be father & ſon, and the father hath a brother that is uncle to the ſon; and the ſon purchaſe land in fee ſimple, and dye without iſſue, living his father; the uncle ſhall have the land as heir to the ſon, and not the father; yet the father is nearer of bloud: becauſe it is a maxime in Law, That inheritance may lineally deſcend, but not aſcend. Yet if the ſon in this caſe dye without iſſue, and his uncle enter into the Land as heir to the fits

fits (ſicome il deboit p la ley) & apres l'uncle debia ſans iſſue, vivant le pere donqs le pere, avera la terre com heire al uncle, & nemy cõe heire a ſon fits, pur ceo que il deigne al terre p collateral diſcent & nemy p lineall aſcention.

ſon (as by Law he ought) and after the uncle dieth without iſſue, living the father, the father ſhall have the land as heir to the uncle, and not as heir to his ſon, for that he commeth to the land by collaterall diſcent & not by lineal aſcent.

concluſion of reaſon ſo called, (q) quia maxima eſt ejus dignitas & certiſſima authoritas, atque quod maximè omnibus probetur, ſo ſure and uncontrollable, as that they ought not to be queſtioned. (r) And that which our Author here and in other places calleth a Maxime, hereafter he calleth a Principle, and it is all one with a Rule, a common ground, Poſtulatum, or an Axiome, and it were too much curioſity to make nice diſtinctions between them. And it is well ſaid in our Books, (ſ) neſt my

(q) Pl. Com. 27. b.

(r) Sect. 90. 648.

(ſ) 12 H. 4. Glanvil. lib. 7. cap. 1. Bract. lib. 2. cap. 29.

a diſputer lancient principles del ley. I never read any opinion in any book old or new againſt this maxime, but only in lib. rub. where it is ſaid, (t) ſi quis ſine liberis diſceſſerit, pater aut mater ejus in hæreditatem ſuccedat, vel frater & ſoror ſi pater & mater deſit; ſi nec hos habeat, ſoror patris vel matris & deinceps qui propinquiores in parentela fuerint, hæreditariò ſuccedant, & dum virilis ſexus extiterit, & hæreditas ab inde ſit, fœmina non hæreditat. But all our ancient Authors, and the conſtant opinion ever ſince, do affirm the maxime.

(t) Lib. Rub. cap. 70.

By this maxime, in the concluſion of his caſe, only lineal aſcention in the right line is prohibited, and not in the collateral, (u) Quælibet hæreditas naturaliter quidem ac hæredes hæreditabiliter deſcendit, nunquam quidem naturaliter aſcendit; deſcendit itaque jus quaſi ponderoſum quod cadens deorſum recta linea vel tranſverſali, & nunquam reaſcendit ea via qua deſcendit poſt mortem anteceſſorum, à latere tamen aſcendit alicui propter defectum hæredum inferiùs provenientium; ſo as the lineal aſcent is prohibited by Law, and not the collateral. And in prohibiting the lineal aſcent, the Common Law is [illegible] with the Law of the twelve tables.

(u) Britt. cap. 119. Fleta lib. 6. cap. 1. Num. b. cap. 27. Ratcliffs caſe ubi ſupra.

Here our Author, for the confirmation of his opinion, draweth a reaſon and a proof (as you have perceived) from one of the Maxims of the Common Law: Now that I may here obſerve it once for all, his proofs and arguments, in theſe his three books, may be generally divided into two parts, viz. from the Common Law and from Statutes: of both which, and of their ſeveral branches, I ſhall give the ſtudious Reader ſome few examples, and leave the reſt to his diligent obſervation.

For the Common Law, his proofs and arguments are drawn from twenty ſeveral fountains or places.

(a) Firſt, from the Maximes, Principles, Rules, Intendment, and Reaſon of the Common Law, which indeed is the rule of the Law as here, and in other places our Author doth uſe.

(b) Secondly, from the books, records, and other authorities of Law cited by him, Ab auctoritate, & pronunciatis.

(c) Thirdly, from original Writs in the Regiſter, à re ſcripta valet argumentum.

(d) Fourthly, from the forme of good pleading.

(e) Fifthly, from the right entry of Judgments.

(f) Sixthly, à præcedentibus approbatis & uſu, from approved Precedents and Uſe.

(g) Seventhly, à non uſu, from not uſe.

(h) Eighthly, ab artificialibus argumentis, conſequentibus, & concluſionibus, artificial argument, conſequents, and concluſions.

Ninthly, (i) à communi opinione juriſprudentium, from the common opinion of the Sages of the Law.

Tenthly, (k) ab inconvenienti, from that which is inconvenient.

Eleventhly, (l) a diviſione, from a diviſion, vel ab enumeratione partium, from the enumeration of the parts.

Twelfthly, (m) à majore ad minus, from the greater to the leſſer, or (n) from the leſſer to the greater, (o) à ſimili, (p) à pari.

13. (p) Ab impoſſibili, from that which is impoſſible.

14. (q) A fine, from the end.

15. (*) Ab utili vel inutili, from that which is profitable or unprofitable.

16. (r) Ex abſurdo, for that thereupon ſhall follow an abſurdity, quaſi à ſurdo prolatum, becauſe it is repugnant to underſtanding and reaſon.

17. (ſ) A natura & ordine naturæ, from nature, or the courſe of nature.

(a) Sect. 5 8. 90. 96. 32. 53. 57. 59. 65. 99. 130. 146. 156. 169. 178. 231. 293. 302. 352. 360. 376. 377. 396. 410. 440. 441. 346, 347. 462. 431.

(b) Sect. 20. where a number of other are quoted.

(c) Sect. 67. 132. 170. 234. 241. 263. 613, 614.

(d) Sect. 58. 170. 183. 369.

(e) Sect. 248. 249.

(f) Sect. 88. 74. 76. 145. 332. 371, 372. 445.

(g) Sect. 108. 733.

(h) Sect. 170. 264. 283. 302. 429. 464. 629. 633. 686. 343. 418. 613. 686. 739.

(i) Sect. 697. 59. 104. 288. 332. 478.

(k) Sect. 87. where many others are quoted.

(l) Sect. 13. where many more are quoted, but ſee chiefly. Sect. 381.

(m) Sect. 438, 439. 441.

(n) Sect. 18.

(o) 301, &c.

(p) 291. 298. 409, &c.

(p) 129. 440.

(q) Sect. 46. 194.

(*) Sect. 360.

(r) Sect. 702.

(ſ) Sect. 114. 223. 126. 211. 107. 108.

18. (t) Ab

18. (t) Ab ordine religionis, from the order of Religion.
19. (u) A communi præſumptione, from a common preſumption.
20. (w) A lectionibus juriſprudentium, from the readings of learned men of Law.

From Statutes, his arguments and proofs are drawn,

1. (x) From there hearſal or preamble of the Statute.
2. By the body of the Law diverſly interpreted.

Sometime by other parts of the ſame Statute, which is benedicta expoſitio, & ex viſceribus cauſæ.

(y) Sometime by the reaſon of the Common Law. But ever the general words are to be intended of the lawful Act; (z) and ſuch interpretation muſt ever be made of all Statutes, that the innocent, or he in whom there is no default, may not be damnified.

¶ *En la ley.* There be Divers Laws within the Realm of England. As firſt. (a) Lex Coronæ, the Law of the Crown.

2. (b) Lex & conſuetudo Parliamenti. Iſta lex eſt ab omnibus quærenda, à multis ignorata, à paucis cognita.

3. (c) Lex naturæ, the Law of nature.

4. (d) Communis Lex Angliæ, the Common Law of England, ſometime called Lex terræ, intended by our Author in this and the like places.

5. (e) Statute Law, Laws eſtabliſhed by Authority of Parliament.

6. (f) Conſuetudines, Cuſtoms reaſonable.

7. (g) Jus Belli, The Law of Arms, War, and Chivalry. In republica maximè conſervanda ſunt jura belli.

8. (h) Eccleſiaſtical or Canon Law in Courts in certain Caſes.

9. (i) Civil Law in certain Caſes, not only in Courts Eccleſiaſtical, but in the Courts of the Conſtable and Marſhal, and of the Admiralty, in which Court of the Admiralty is obſerved, la ley Olyron, anno 5. of Richard the firſt, ſo called, becauſe it was publiſhed in the Iſle of Olyron.

10. (k) Lex foreſtæ, Foreſt Law.

11. (l) The Law of Marque, or reprizal.

12. (m) Lex mercatoria, Merchant, &c.

13. (n) The Laws and Cuſtoms of the Iſles of Jerſey, Garneſey, and Man.

14. (o) The Law and priviledge of the Stannaries.

15. (p) The Laws of the Eaſt, Weſt, and middle Marches, which are now abrogated.

But hereof this little taſte for our Student, that he may be capable of that which he ſhall read concerning theſe and others, in Records, and in our Books, and orderly obſerve them, ſhall ſuffice.

¶ *Et ſon uncle enter en la terre.* For if the Uncle in this caſe doth not enter into the land, then cannot the Father inherit the land, for there is another maxim in Law herein implyed. (q) That a man that claimeth as heir in Fee ſimple to any man by deſcent, muſt make himſelf heir to him that was laſt ſeiſed of the actual Freehold and inheritance. And if the Uncle in this caſe doth not enter, then had he but a freehold in Law, and no actual freehold, but the laſt that was ſeiſed of the actual freehold, was the ſon, to whom the father cannot make himſelf heir; and therefore Littleton ſaith, Et ſon uncle enter en la terre (ſi come devoit per la ley) to make the father to inherit as heir to the uncle. (r) Note, that true it is, that the uncle in this caſe is heir, but not abſolutely heir; for if after the deſcent to him, the father hath iſſue a ſon or daughter, that iſſue ſhall enter upon the Uncle. (ſ) And ſo it is if a man hath iſſue a ſon and daughter, the ſon purchaſeth land in fee, and dieth without iſſue, the daughter ſhall inherit the land; but if the father hath afterward iſſue a ſon, this ſon ſhall enter into the land, as heir to his brother; and if he hath iſſue a daughter and no ſon, ſhe ſhall be coparcener with her ſiſter.

¶ *Si come il devoit per la ley.* Theſe words, as a key, do open the ſecrets of the Law, for hereupon it is concluded, that where the Uncle cannot get an actual poſſeſſion by entry or otherwiſe, there the father in this caſe cannot inherit. And therefore if an Advowſon be granted to the ſon and his heirs, and the ſon dye without iſſue, and this deſcend to the uncle, and he dye before he doth or can preſent to the Church, the father ſhall not inherit, becauſe he ſhould make himſelfe heir to the ſon, which he cannot do: And ſo of a rent, and the like. But if the uncle had preſented to the Church, or had ſeiſin of the rent, there the father ſhould have inherited. For Littleton putteth his caſe of an entry into land, but for an example. If the ſon make a leaſe for life, and die without iſſue, and the reverſion deſcend to the uncle, and he dye, the reverſion ſhall not deſcend to the father, becauſe in that caſe he muſt make himſelf heir to the ſon. If he infeoffe the ſons with warranty to him and his heirs, the ſon dies, the uncle enters into the land, and dies, the father, if he be impleaded, ſhall not take advantage of this warranty

(r) Sect. 202.
(u) Sect. 440.
(w) Sect. 481.

(x) Sect. 13, &c. Sect. 731. 692. 635. 633. 441. 103. 193. 154. 140. a.

(y) Sect. 464.
(z) Sect. 731. 685.

(a) 17 E. 3. Rot. parl. nu. 19. 25 E. 3. cap. 1. Regiſt. inter Jura regia 6. I. &c.
(b) Commonly ſpoken of in Parliament Rols.
(c) 13 E. 4. 9. lib. 7. Calvins caſe Pl. Com. Sharingtons caſe
(d) This Law appeareth in our Books and judicial Records.
(e) Theſe are of Record in Rolls of Parliament.
(f) Whereof you ſhall read in our Authour, and in our Books.
(g) Rot. parl. 2 R. 2. nu. 3. 13 R. 2. cap. 2.
(h) Lib. 7. Cawdries caſe. articul. ſuper cartas, &c.
(i) 37 H. 6. 21. Forteſc. c. 32. 13 H. 4. 4. 28 H. 8. cap. 15.
(k) Carta de Foreſta, &c. the Eires of the Foreſts.
(l) 27 E. 3. cap. 17. Wi. ca. 23. 4 H. 5. cap. 7.
(m) Mirrour de Juſtic. cap. 1. Bract. 334. 444. Fleta lib. 2. cap. 51. 52, &c. 5 E. 3. 11. 38 E. 3. 7. 27 E. 3. cap. 8. Forteſc. 32. F. N. B. 117. 13 E. 4. 9. Rot. parl. 6 H. 4. nu. 43. 10 H. 7. 16. 47 E. 3. 22.
30 E. 1. Account. 127. Carta mercatoria 31 E. 1. Rot. patent.
(n) Mich. 41 E. 3. coram Rege in Theſaur. 12. fo. 7. 1 E. 2 12 H. 8. fol. 5. Rot. par. an. 20 E. 1. lib. 7. Calvins caſe. fol. 21. Regiſt. fol. 22.
(o) 50 E. 3. Rot. parl. 50 E. 3. Rot. patent, &c.
(p) 31 H. 6. cap. 3, 4. Jac. 1.
(q) 11 H. 4. 11. 10. Aſſ. 27. 34. Aſſ. p. 20. 19 E. 2. Quar. imped. 177. 45 E. 3. 13. 40. Aſſ. p. 6.
(r) 11. Aſſ. p. 6. Doct. & Stud. 12. b. 32 H. 6. 35.
(ſ) 19 H. 6. 61.

ranty, for then he muſt vouch A. as heir to his ſon, which he cannot do, for albeit the warranty deſcended to the uncle, yet the uncle leaveth it as he found it, and then the father by Littletons (devoit) cannot take advantage of it. For Littleton, Sect 603. ſaith, that warranties ſhall deſcend to him that is heir by the Common Law: and Sect. 7. 18. he ſaith, that every warranty by the Common Law, which proveth that the father ſhall not be bound by the warranty made by the ſon, for that the father cannot be heir to the ſon that made the warranty. And a warranty ſhall not go with tenements, whereunto it is annexed, to any ſpecial heir but always to the heir at the Common Law. And therefore if the uncle be ſeiſed of certain lands, and is diſſeiſed, the ſon releaſe to the diſſeiſor with warranty, and die without iſſue, this ſhall bind the uncle, but if the uncle die without iſſue, the father may enter, for the warranty cannot deſcend upon him. So if the ſon concludeth himſelf by pleading concerning the tenure and ſervices of certain lands, this ſhall bind the uncle; but if the uncle die without iſſue, this ſhall not bind the father, becauſe he cannot be heir to the ſon, and conſequently not to the Eſtoppel in that caſe: but if it be ſuch an Eſtoppel as runneth with the land, then it is otherwiſe.

Vide ſect. 603. 7.18.

Vide ſect. 735. 736, 737.

35 H. 6. 33. John Crooks caſe.

Sect. 4.

¶ ET en tiel caſe, lou le fits purchaſe terre en Fee ſimple, & debie ſauns iſſue, ceux de ſon ſanke de part' ſon pere enheriteront cõe heires a luy, devant alcun de ſanke de pt ſa mere: mes ſil nad alcun heire de part ſon pere, donques la tre diſcendera a les heires de part la mere. Mes ſi home pnt enheritrix des tres en Fee ſimple, que ont iſſue fits, et debiont & le fits enter en les tenements, cõe fits & heire a ſa mere, & puis debie ſans iſſue, les heires de part la mere doyent enheriter les tenements & jammes les heires de part le pere. Et ſil ny ad alcun heire de part la mere, donque le Seignior de que la terre eſt tenus,

AND in caſe, where the ſon purchaſeth Land in Fee ſimple, and dyes without iſſue; they of his blood on the fathers ſide ſhall inherit as heirs to him, before any of the blood on the mothers ſide. But if he hath no heire on the part of his father, then the land ſhall deſcend to the heires on the part of the mother: but if a man marrieth an inheritrix of lands in Fee ſimple who have iſſue a ſon, and die, and the ſon enter into the tenements, as ſon and heir to his mother, and after dies without iſſue, the heirs of the part of his mother ought to inherit, and not the heires of the part of the father. And if he hath no heire on the part of the mother, then the Lord of whom the land is

¶ BY this it appeareth, that our Author divideth heires into heires of the part of the father, and into heires of the part of the mother. (a) And note, it is an old and true Maxime in Law, that none ſhall inherit any lands as heir, but only the bloud of the firſt Purchaſer, for * refert a quo fiat perquiſitum. As for example, Robert Coke taketh the daughter of Knightley to wife, and purchaſeth lands to him and to his heires, and by Knightley hath iſſue Edward, none of the bloud of the Knightleys, though they be of the bloud of Edward ſhall inherit, albeit he had no kindred but them, becauſe they were not of the bloud of the firſt purchaſer, viz. of R. Coke.

Vide ſect. 354. an excellent point.

(a) Pl. Com. Sir Edward Cleres caſe 47.

* Fleta lib. 6. cap. 1. 2, &c. Bracton lib. 2. fo. 65. 67, 68, 69, &c, Britton ca. 119. 24 E. 3. 50. 39 E. 3. 22, 30. 38. 49 E. 3. 12. 49 Aſſ. p. 4. 12 E. 4. 14. Pl. Com. 445. & 450. 7 E. 6. Dier 6. 24 E. 3. 24. 37. Aſſ. 4. 40 E. 3. 9, 42 E. 3. 10. 45 E. Releaſes 28. 7. H. 5. 324. 8. Aſſ. 6. 45. Aſs. 2. 5. E. 4. 7. 3 H. 5. 21. H. 7. 33. 40 Aſſ. 6. Ratcliffs caſe lib. 4. fol. 42.

¶ (b) *Ceux del ſanke de part ſon pere.* Here it is to be underſtood, that the father hath two immediate blouds in him, viz. the bloud of his father, and the bloud of his mother, both theſe blouds are of the part of the father. (c) And this made ancient Authors ſay, that if a man be ſeiſed of lands in the right of his wife, and is attainted of felony, and after hath iſſue, this iſſue ſhould not inherit his mother, for that he could derive no bloud inheritable from the father. And both theſe blouds of the part of the father muſt be ſpent before

(b) Bracton, ubi ſupra. Fleta, ubi ſupra. Britton, cap. 118, 119. Pl. Com. 445. Cleres caſe. Tr. 19 E. 1. in Banco Rot. 25 Lincoln. Will. Scels caſe.

(c) Britton, fol. 17. Fleta, lib. 1. cap. 18. Pl. Com. 445, 446, &c. Cleres caſe.

before the heir of the blood of the part of the mother ſhall inherit, wherein ever the line of the male of the part of the father, (that is) the poſterity of ſuch male, be they male or female, (who ever in deſcents are preferred) muſt faile before the line of the mother ſhall inherit, (d) and the reaſon of all this is for that the blood of the part of the father is more worthy, and more near in judgment of the Law, than the blood of the part of the mother.

(d) 19 R.2. garr. 100.

¶ *Devant aſcun del ſanke del part del mere.* And it is to be obſerved, that the mother hath alſo two immediate bloods in her, (viz.) her fathers blood, and her mothers blood. Now to illuſtrate all this by example. Robert Fairefield, Son of John Fairefield, and Iane Sandie, take to wife Anne Boyes, Daughter of John Boyes, and Iane Bewpree, and hath Iſſue William Fairefield, who purchaſeth lands in fee. Here William Fairefield hath four immediate bloods in him, two of the part of the father, viz. the blood of the Fairefields, and the blood of the Sandies, and two of the part of his mother, viz. the blood of the Boyſes, and the blood of the Bewprees, and ſo in both caſes upward in infinitum. Now admit that William Fairefield die without iſſue, firſt the blood of the part of his father, viz. of the Fairefields, and for want thereof, the blood of the Sandies (for both theſe are of the part of the father) if both theſe fail, then the heires of the part of the mother of William Fairefield ſhall inherit, viz. firſt the blood of the Boyſes, and for default thereof the blood of the Bewprees.

Britton, cap. 118. 119. Fleta, lib. 6. cap. 2.

avera la terre per Eſcheat. En meſme le manner eſt, ſi tenements diſcendont a le fits de part le pere, & il enter & puis morust ſans iſſue, tel terre diſcendra as heires de part le pere & nemy as heires de part la mere. Et ſil ny ad aſcun heire de part le pere, donques le ſeignior, de que la terre eſt tenus, a vera la terre per Eſcheat. Et ſic vide diverſitatem, lou le fits purchaſe terres ou tenements, en Fee ſimple, & lou il veient eins a tiels terres ou tenements per diſcent de part ſa mere ou de part ſon pere.

holden, ſhall have the land by Eſcheat. In the ſame manner it is, if lands deſcend to the ſon of the part of the father, and he entreth, & afterwards dies without iſſue, this Land ſhall deſcend to the heirs on the part of the father, and not to the heirs on the part of the mother. And if there be no heir of the part of the father, the Lord of whom the Land is holden, ſhal have the land by Eſcheat. *And ſo ſee the diverſity*, where the ſon purchaſeth lands or tenements in Fee ſimple, and where he commeth to them by deſcent on the part of his mother, or on the part of the father.

It is neceſſary to be known in what caſes the heir of the part of his mother, ſhall inherit, and where not. If a man be ſeiſed of lands, as heir of the part of his mother, and maketh a feoffment in fee, and taketh back an eſtate to him and to his heirs, this is a new purchaſe; and if he dieth without iſſue, the heires of the part of the father ſhall firſt inherit. If a man ſo ſeiſed, maketh a feoffment in fee upon condition, and die, the heir of the part of the father which is the heir at the common Law, ſhall enter for the condition broken, but the heir of the part of the mother ſhall enter upon him, and enjoy the land. (m) If man ſo ſeiſed maketh a feoffment in fee reſerving a rent to him and his heirs, this rent ſhall go to the heirs on the part of the father; but (n) if he had made a gift in tail, or a leaſe for life reſerving a rent, the heir of the part of the mother ſhall have the reverſion, and the rent alſo, as incident thereunto, ſhall paſs with it, but the heir of the part of the mother ſhall not take advantage of a condition annexed to the ſame, becauſe it is not incident to the reverſion, nor can paſs therewith. (o) If a man had bin ſeiſed of a mannor, as heir on the part of his mother, and before the Statute of Quia emptores terrarum, had made a feoffment in fee of parcel to hold of him by rent and ſervice, albeit they be newly created, yet for that they are parcel of the manor, they ſhall with the reſt of the manor deſcend to the heir of the part of the mother, quia multa tranſeunt cum univerſitate quæ per ſe non tranſeunt. If a man hath a rent ſeek of the part of his mother, and the tenant of the land granteth

9 H. 7. cap. 24.

(m) 7 H. 6. 4. Lib. 1. fol. 100. Shellyes caſe.

(n) 5. E. 2. tit. avowry 207.

(o) 5 E. 2. avowry 207.

granteth a diſtreſs to him and his heirs, and the Grantee dieth, the diſtreſs ſhall go with the Rent to the heir of the part of the Mother as incident or appurtenant to the Rent, for now is the Rent ſeck become a Rent charge.

(p) A man ſo ſeiſed as heir of the part of his Mother, maketh a feoffment in Fee to the uſe of him and his heirs, the uſe being a thing in truſt and confidence ſhall enſue the nature of the Land, and ſhall deſcend to the heir on the part of the Mother. (q) A man hath a Seigniory as heir of the part of his Mother, and the Tenancy doth eſcheat, it ſhall go to the heir of the part of the Mother. If the heir of the part of the Mother of Land whereunto a warranty is annexed is impleaded and Vouche, and judgment is given againſt him, and for him to recover in value, and dieth before execution, (r) the heir of the part of the Mother ſhall ſue execution to have in value againſt the Vouchee, for the effect ought to purſue the cauſe, and the recompence ſhall enſue the loſs.

(p) 5 E.4.4. lib.1. fol.100. Shelleys Caſe. 27 H. 8. Dyer, Buckenhams Caſe. 32 H.8. gard. Brook 93. 13 H. 6, 7.
(q) 16 E. 3. pag. 46.
(r) Pl. Com. 292, & 515. See more of this in the Chapter of Warranties.

If a man giveth Lands to a man, to have and to hold to him and his heirs on the part of his Mother, yet the heirs of the part of the Father ſhall inherit, for no man can inſtitute a new kind of inheritance not allowed by the Law, and the words (of the part of his Mother) are void, as in the caſe that Littleton putteth in this Chapter. If a man giveth Lands to a man to him and his heirs males, the Law rejecteth this word Males, becauſe there is no ſuch kind of inheritance, whereof you ſhall read more in his proper place.

If a man hath iſſue a Son, and dieth, and the wife dieth alſo, Lands are letten for life, the remainder to the heirs of the wife. the Son dieth without iſſue, the heirs of the part of the Father ſhall inherit, and not the heirs of the part of the Mother, becauſe it veſted in the Son as a Purchaſer. And the rule of Littleton holdeth as well in other kind of inheritances, as in Lands and Tenements. (s) And therefore if there be Lord, ſem meſne, and Tenant, and the Meſne bind her ſelf and her heirs by her Deed to the acquital of the Tenant, the Meſne take Husband, the Tenant by his Deed granteth to the husband and his heirs, that he or his heirs ſhall not be bound to acquital, the husband and wife have iſſue, and dye, this iſſue, being bound as heir to his Mother, ſhall not take benefit of the ſaid Grant of diſcharge, for that extends to the heirs of the part of the Father, and not to the heirs of the part of the Mother, and therefore the heir of the part of the Mother was bound to the acquital. And thus much for the better underſtanding of Littleton's Caſes concerning the heir of the part of the Mother ſhall ſuffice.

(s) 38 E. 3. 12.

¶ *Mes ſi home priſt feme inheritrix, &c.* Here is another Maxime, (t) That whenſoever Lands do deſcend from the part of the Mother, the heirs of the part of the Father ſhall never inherit. And likewiſe when Lands deſcend from the part of the Father, the heirs of the part of the Mother ſhall never inherit. Et ſic paterna paternis, & è converſo materna maternis. For more manifeſtation hereof, and of that which which hereafter ſhall be ſaid touching Deſcents, ſee a Table in the end of this Chapter.

(t) 39 E. 3, 29. 49 E. 3. 12.

¶ *Avera la terre per Eſcheat.* (u) Eſcheat, Eſchaeta is a word of Art, and derived from the French word Eſcheat (id eſt) cadere, excidere or accidere, and ſignifieth properly when by accident the Lands fall to the Lord of whom they are holden, in which Caſe we ſay the Fee is eſcheated. And therefore, of ſome, Eſcheats are called excadentiæ, or terræ excadentiales. (w) Dominus vero capitalis loco hæredis habetur quoties per defectum vel delictum extinguitur ſanguis ſui tenentis, loco hæredis & haberi poterit, niſi per modum donationis ſit reverſio cujuſque tenementi. And Ockam (who wrote in the reign of Henry 2.) treating of Tenures of the King, ſaith, Porro eſchaetæ vulgo dicuntur, quæ decedentibus hiis quæ de Rege tenent, &c. cum non exiſtit ratione ſanguinis hæres ad fiſcum relabuntur. (x) So as an Eſcheat doth happen two manner of ways aut per defectum ſanguinis, i. for default of heir. aut per delictum tenentis, i. for felony, and that is by judgment thæ manner of ways, aut quia ſuſpenſus per collum, aut quia abjuravit regnum, aut quia utlagatus eſt. And therefore, they which are hanged by Martial Law, in furore belli forfeit no Lands: and ſo in like Caſes Eſcheats by the Civilians are called Caduca.

(u) Vide ſect. 130. Glanvill. lib.7. cap.17. Bract. lib.3. fol. 118. Fleta lib.5. cap.5, & lib. 3. cap. 10. Britton ca. 37, & cap.119. F. N. B.100. Tr. 19 E.1. in Banco Rot.25.
(w) Fleta lib. 6. cap.1. Ockam cap. quod non abſolvitur, &c.
(x) Pl.Com. Dame Hales caſe.

(y) The Father is ſeiſed of Lands in Fee holden of I. S. the Son is attainted of high Treaſon, the Father dieth, the Land ſhall eſcheat to I S. propter defectum ſanguinis, for that the Father dieth without heir. And the King cannot have the Land becauſe the Son never had any thing to forfeit. But the King ſhall have the Eſcheat of all the Lands whereof the perſon attainted of high Treaſon was ſeiſed, of whomſoever they were holden.

(y) Pl. Com. in Nichols caſe.

(z) In an Appeal of Death or other Felony, &c. Proceſs is awarded againſt the Defendant, and hanging the proceſs the Defendant conveyeth away the land, & after is outlawed, the conveyance is good and ſhall defeat the Lord of his eſcheat, but if a man be indicted of Felony, and hanging the proceſs againſt him, he conveyeth away the land, and after is outlawed, the Conveyance ſhall not in that caſe prevent the Lord of his Eſcheat. And the reaſon of this diverſity is manifeſt: for in the caſe of the Appeal, the Writ containeth no time when

(z) 38 E. 3. f.37. 30 H. 6, 5. Bract. l.2. tit. de Forf. Stamf. pl. cor. 192, and according to this diverſity was it reſolved in 5 E-6. as it appeareth by my Lord Dyers Manuſcript.

the Felony was done, and therefore the Eſcheat can relate but to the Outlawry pronounced. But the Indictment containeth the time when the Felony was committed, and therefore the Eſcheat upon the Outlawry ſhall relate to that time. Which caſes I have added, to the end the Student may conceive that the obſervation of Writs, Indictments, Proceſs, Judgments and other Entries, doth conduce much to the underſtanding of the right reaſon of the Law.

(a) Mirror ca. 1. ſect. 5. 51 H. 3. ſtatutum de Scac. Britton. fo. 33. 34. Flet. 1. cap. 36. and lib. 2. cap. 34. 35. Regiſt. 301. his Oath. 18 E. 1. Rot. Parl. 21 E. 1. Rot. 1. 29 E. 1. ſtat. de Eſchaetoribus. 14 E. 3. c. 8. 28 E. 1. c. 18. F. N. B. 100. c. Stamf. Prær. 81. 1. H. 8. ca. 8. 3. H. 8. c. 2. Capitula Eſchaetriæ in Vet. Magna Charta. fol. 160, 161, &c.

Of this word (Eſchaeta) here uſed by our Author cometh (a) Eſchaetor, an ancient Officer ſo called, becauſe his office is properly to look to Eſcheats, Wardſhips, and other caſualties belonging to the Crown. In ancient time there were but two Eſcheators in England, the one on this ſide of Trent, and the other beyond Trent, at which time they had Sub-eſchaetors. But in the reign of Edward the ſecond, the Offices were divided, and ſeveral Eſcheators made in every County for life, &c. and ſo continued until the reign of Edward 3. And afterwards by the ſtatute of 14 E. 3. it is enacted by authority of Parliament, that there ſhould be as many Eſcheators aſſigned, as when King Edward 3. came to the Crown, and that was one in every County, and that no Eſcheator ſhould tarry in his Office above a year, and by another ſtatute to be in Office but once in three years; the Lord Treaſurer nameth him.

And hereof alſo cometh Eſchaetria, which ſignifieth the Eſcheatorſhip, or the Office of the Eſcheator. But now let us hear what our Author will further ſay unto us.

¶ Et ſic vide, &c. This kind of ſpeech is often uſed by our Author, and doth ever import matter of excellent obſervation, which you may find in the Sections noted in the margent *.

* Sect. 147, 149, 248, 289. 417, 667, &c.

And it is to be well obſerved, that our Author ſaith, Sil nad aſcun heire, &c. la terre eſchaetera. In which words is implied a diverſity (as to the Eſcheat) between Fee ſimple abſolute, which a natural body hath, and Fee ſimple abſolute which a body politique or incorporate hath. (b) For if Land holden of I. S. be given to an Abbot and his Succeſſors: In this caſe if the Abbot and all the Covent die, ſo that the body politique is diſſolved, the Donor ſhall have again this Land, and not the Lord by Eſcheat. And ſo if Land be given in Fee ſimple to a Dean and Chapter, or to a Mayor and Commonalty, and to their Succeſſors, and after ſuch body politique or incorporate is diſſolved, the Donor ſhall have again the Land, and not the Lord by Eſcheat. And the reaſon and cauſe of this diverſity is, for that in the caſe of a body politique or incorporate the Fee ſimple is veſted in their politique or incorporate capacity created by the policy of man, and therefore the Law doth annex a condition in Law to every ſuch Gift and Grant. That if ſuch body politique or incorporate be diſſolved, that the Donor or Grantor ſhall re-enter, for that the cauſe of the Gift or Grant faileth, but no ſuch condition is annexed to the Eſtate in Fee ſimple veſted in any man in his natural capacity, but in caſe where the Donor or Feoffor reſerveth to him a Tenure, and then the Law doth imply a condition in Law by way of Eſcheat. Alſo (as hath been ſaid) no Writ of Eſcheat lieth but in the three caſes aforeſaid, and not where a body politique or incorporate is diſſolved.

(b) 7 E. 11, 12. F. N. B. 33. 9 E. 3. 26. 17 E. 2. ſtat. de templariis.

Sect. 5.

¶ NOw cometh our Author to the deſcent betwen brethren, which he purpoſely omitted before.

¶ Diſcent, deſcenſus cometh of the Latine word deſcendo, and, in the legal ſenſe, it ſignifieth, when Lands doe by right of blood fall unto any after the death of his anceſtors: or a deſcent is a means whereby one doth derive his title to certain Lands as heir to ſome of his anceſtors. And of this, and of that which hath been ſpoken doth ariſe another diviſion of eſtates in Fee ſimple, viz. every man that hath a lawful eſtate in Fee ſimple, hath it either by deſcent or purchaſe.

¶ Item ſi ſoient trois freres, & le mulnes frere purchaſe terres en Fee ſimple & debie ſauns iſſue, leigne frere avera la terre per diſcent & nemy le puiſne, &c. Et auſi ſi ſoient trois freres & le puiſne purchaſe terres en Fee ſimple & debie ſans iſſue, leigne frere avera la terre per diſcent &

Alſo if there bee three brethren, and the middle Brother purchaſeth Lands in Fee ſimple, and die without iſſue, the elder Brother ſhall have the Land by deſcent, and not the younger, &c. And alſo if there be three Brethren, and the youngeſt purchaſe Lands in Fee ſimple, and die without iſſue; the eldeſt brother ſhall

nemy

nemy le mulnes, pur ceo que leigne eſt pluis digne de ſanke.

have the land by deſcent & not the middle, for that the eldeſt is moſt worthy of blood.

¶ *Leigne eſt pluis digne de ſanke.* It is a maxime in Law that the next of the worthieſt blood ſhall ever inherit, as the male and all deſcendant from him before the female, and the female of the part of the father before the male or female of the part of the mother, &c. because the female of the part of the father is of the worthieſt blood. (c) And therefore among the males the eldeſt brother and his poſterity ſhall inherit lands in fee ſimple, as heir before any younger brother or any deſcending from him becauſe (as Littleton ſaith) he is pluis digne de ſanke. Quod prius eſt dignius eſt, and qui prior eſt tempore potior eſt jure. Si quis plures filios habuerit, jus proprietatis primo deſcendit ad primogenitum, eo quod inventus eſt primo in rerum natura. In King Alfreds time, Knights fees deſcended to the eldeſt ſon, for that by diviſions of them between males the defence of the Realm might be weakned, but in thoſe dayes Socage fee was divided between the heirs males, and therewith agreeth Glanvil. * Cum quis hæreditatem habens moriatur, &c. ſi plures reliquerit filios, tunc diſtinguitur utrum ille fuerit miles, ſive per feodum militare tenens, aut liber Sockmannus, quia ſi miles fuerit aut per militiam tenens, tunc ſecundum jus regni Angliæ primogenitus filius patri ſuccedit in toto, &c. ſi verò fuerit liber Sockmannus, tunc quidem dividetur hæreditas inter omnes filios, &c. But hereof more ſhall be ſaid hereafter in his proper place.

(c) Britton cap. 119. Bract. lib. 2. cap. 30. 277. 279. 3 E. 3. 26. 3 Eliz. Dyer. 138. Stanf. prær. 51. 58. 3 E. 1. tit. avowrie, 235. 32 E. 3. diſcent. 80. Bract. lib. 4. 211. Fleta lib. 6. cap. 2. Glanvill lib. 7. cap. 1. Mirror cap. 1. ſect. 3. * Glanvil lib. 7. cap. 3. & ca. 1. Vide Pl. Com. 229. b.

Sect. 6.

¶ Item eſt aſcavoir, que nul avera terre de fee ſimple per diſcent cõe heire a aſcun home, ſi non que il ſoit ſon heire dentire ſanke. Car ſi home ad iſſue deux fits per divers venters & leigne purchaſe terres en Fee ſimple & moruſt ſans iſſue, le puiſne frere navera la terre, mes luncle leigne frere ou auter ſon procheine coſin ceo avera, pur ceo que le puiſne frere eſt de demy ſanke al eigne frere.

ALſo it is to be underſtood, that none ſhall have land of Fee ſimple by diſcent as heire to any man, unleſs he be his heire of the whole blood, for if a man hath iſſue two ſons by divers venters and the elder purchaſe lands in Fee ſimple, and dye without iſſue, the younger brother ſhall not have the land, but the uncle of the elder brother, or ſome other his next coſin ſhal have the ſame, becauſe the younger brother is but of half blood to the elder.

¶ NO man can be heire to a fee ſimple by the Common Law (d) but he that hath ſanguinem dupli catum, the whole blood, that is, both of the father, and of the mother, ſo as the half blood is no blood inheritable by deſcent, becauſe that he that is but of the half blood cannot be a compleat heire, for that he hath not the whole and compleat blood, and the Law in deſcents in fee ſimple doth reſpect that which is compleat and perfect. And this maxime doth not only hold where lands (whereof Littleton here ſpeaketh) are claimed or demanded as heire, (e) but alſo in caſe of appeal of death: for if one brother be ſlain, the other brother of the half blood ſhall never have an appeal (albeit he ſhall recover nothing therein either in the realty or perſonalty) becauſe in the eye of the Law he is not heir to him. Alſo this rule extends to a warranty, as our Author himſelf elſewhere holdeth.

(d) Bract. lib. 4. 279. b. Idem lib. 2. fo. 65. Britton cap. 119. Fleta lib. 6. cap. 1. 1 E. 3. 19. John Giſſords caſe. 31 E. 3. Counterpl. de Voucher 88. 40 Aſſ. 6. 4 E. 2. Formd. 49. Vid. Ratcliffs caſe. lib. 3. fol. 40, 41.

(e) 7 E. 4. 15.

Sect. 7.

¶ ET ſi home ad iſſue fits & file

ANd if a man hath iſſue a ſon and a

¶ This is put for an example to illuſtrate that which hath

been

Britton cap. 119.

bæn ſaid, and nædeth no explanation. And herewith agræth Britten.

per un venter, & fits per auter venter, & le fits del primer venter purchaſe terres en fee, & mor ſans iſſue, la ſoer avera la terre p diſcent, come herre a ſa frere & ney le puiſne frere, pur ceo que la ſoer eſt de le entire ſanke a ſon eigne frere.

daughter by one venter, and a ſon by another venter, & the ſon of the firſt venter purchaſe lands in fee and dye without iſſue, the ſiſter ſhall have the land by deſcent as heir to her brother, and not the younger brother, for that the ſiſter is the whole blood of her elder brother.

Sect. 8.

¶ *Eiſe de terres en Fee ſimple.* Theſe words exclude a ſeiſin in *Fee tail*, albeit he hath a *Fee ſimple expectant*. (f) And therefore if Lands be given to a man and his wife, and to the heirs of their two bodies, the remainder to the heirs of the husband, and they have iſſue a ſon, and the wife dyeth, and he taketh another wife, and hath iſſue a ſon, the father dyeth, the eldeſt ſon entreth, and dieth without iſſue, the ſecond brother of the half blood ſhall inherit, becauſe the eldeſt ſon by his entry was not actually ſeiſed of the fee ſimple, being expectant but onely of the eſtate tail. And the rule is, that Poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem, and here the eldeſt ſon is not poſſeſſed of the *Fee ſimple* but of the eſtate tail. And where Littleton ſpeaketh onely of Lands (g) yet there ſhall be Poſſeſſio fratris of an uſe, of a ſeigniory, a rent, an advowſon, and of other hereditaments.

(f) 24 E.3.24. 30.
31 E.3. Count de Vouch. 88.
32 E.3. tit. Voucher.
37 Aſſ. p.4.
40 E. 3.9.
42 E. 3. 10.
30 E.3. fo'. 13.
7 H.5.3.

(g) 5 E.4. fo. 7.
Pl. Com. fo. 58. in Wimbiſhes caſe.

¶ *Et leigne fits enter.* (h) Theſe words are materially added when the father dies ſeiſed of lands in fee ſimple, for if the eldeſt ſon doth not in that caſe enter, then without queſtion the youngeſt

(h) 10 Aſſ. 27.34 Aſſ. 10.
31 E.3. Count de Vouchez 88.32 E.3 tit. Vouch. 94.

¶ ET auxi ou hõe eſt ſeiſe de terres en Fee ſimple, & ad iſſue fits & file p un venter, & fits per auter venter, & mor, & leigne fits enter, & mor ſans iſſue, la file avera les tenements, & nemy le puiſne fits, uncore le puiſne fits eſt heir a le pere, mes nemy a ſon frere, mes ſi leigne fits ne entra en la tre apres la mort ſon pere, mes mor devant aſcun entrie fait per luy, donques le puiſne frere poit enter, & avera le terre come heire a ſon pere. Mes lou leigne fits en la caſe avantdit entra apres la mort ſon pere, & ad ent poſſeſſion, donques la ſoer avera la tre

And alſo where a man is ſeiſed of lands in fee ſimple and hath iſſue a ſon and daughter by one venter, and a ſon by another venter, and dye, and the eldeſt ſon enter, and dye without iſſue, the daughter ſhall have the land, and not the younger ſon, yet the younger ſon is heir to the father but not to his Brother, but if the eldeſt ſon doth not enter into the land after the death of his father but dye before any entry made by him then the younger brother may enter and ſhall have the land as heir to his father: but where the elder ſon in the caſe aforeſaid enters after the death of his father, and hath poſ-

Quia poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem. Mes ſi ſont deux freres per divers venters, & leigne eſt ſeiſie de terre en fee, & mor ſans iſſue, & ſon Uncle entra come prochein heire a luy quel auxy mor ſans iſſue, ore le puiſne frere puit aver la terre come heire al uncle, pur ceo que il eſt de lentier ſanke a luy, coment que il ſoit de demi ſanke a ſon eigne frere.

ſeſſion there the Siſter ſhall have the Land, becauſe *Poſſeſſio fratris de feodo ſimplici facit ororem eſſe heredem.* But if there be 2 Brothers by divers Venters, and the elder is ſeiſed of Land in fee, and die without iſſue, & his Uncle enter as next Heir to him, who alſo die without iſſue, now the younger Brother may have the Land as Heir to the Uncle, for that he is of the whole bloud to him, albeit he be but of the half bloud to his elder Brother.

ſon ſhall be heir, becauſe as it hath been ſaid before regularly he muſt make himſelf heir to him that was laſt actually ſeiſed (or to the purchaſer) and that was to the father where the eldeſt ſonne did not enter. And therefore Littleton adverth that the ſonne is heir to the father. (i) But when the eldeſt ſonne in this caſe doth enter, then cannot the youngeſt ſonne being of the half bloud be heir to the eldeſt, but the Land ſhall deſcend to the Siſter of the whole bloud. Yet in many caſes albeit the ſonne doth not enter into Lands deſcended in Fee ſimple, the Siſter of the whole bloud ſhall inherit, and in ſome caſes where the eldeſt ſonne doth enter, yet the younger Brother of the half bloud ſhall be heir. (k) If the Father maketh a Leaſe for years, and the Leſſee entreth and dieth, the eldeſt ſonne dieth during

(i) 11 H. 4. 11. 40 E. 3. 30. 45 E. 3. 13. 40 Aſſ. p. 6. Ratcliffs Caſe, lib. 3. fol. 31.

(k) 5 E. 4. 7. b. 3 H. 7. 5. 8 Aſſ. p. 6. 45 E. 3. tit. Releaſes 28.

the term before entry or receipt of Rent, the younger ſonne of the half bloud ſhall not inherit but the Siſter, becauſe the poſſeſſion of the Leſſee for years, is the poſſeſſion of the eldeſt ſonne, ſo as he is actually ſeiſed of the Fee ſimple, and conſequently the Siſter of the whole bloud is to be heir. The ſame Law it is if the Lands be holden by Knights ſervice, and the eldeſt ſonne is within age, and the Guardian entreth into the Lands. And ſo it is if the Guardian in Socage enter.

But in the caſe aforeſaid, if the Father make a Leaſe for life or a Gift in tail and dieth, and the eldeſt ſon dieth in the life of Tenant for life or Tenant in tail, the younger Brother of the half bloud ſhall inherit, becauſe the Tenant for life, or Tenant in tail is ſeiſed of the Freehold, and the eldeſt ſon had nothing but reverſion expectant upon that Freehold or eſtate tail, and therefore the youngeſt ſon ſhall inherit the Land as heir to his Father, who was laſt ſeiſed of the actual Freehold. And albeit a Rent had been reſerved upon the Leaſe for life, and the eldeſt ſon had received the Rent and died, yet it is holden by ſome * that the younger Brother ſhall inherit, becauſe the ſeiſin of the Rent is no actual ſeiſin of the Freehold of the Land. But 35. Aſſ. pl. 2. ſeemeth to the contrary, becauſe the Rent iſſueth out of the Land and is in lieu thereof, wherein the onely queſtion is, whether ſuch a ſeiſin of Rent be ſuch an actual ſeiſin of the Land in the eldeſt ſon, as the Siſter may in a Writ of right make her ſelf heir of this Land to her Brother. But it is clear that (l) if there be a baſtard eigne, and mulier puiſne, and the Father maketh a Leaſe for life or a Gift in tail by reſerving a Rent and die, and the baſtard receive the Rent and die, this ſhall bar the Mulier, for the reaſon of that ſtandeth upon another Maxime as ſhall manifeſtly appear in his apt place, Sect. 399.

* 7 H. 5. 34. per Hallis & Logdington. 35 Aſſ. p. 2.

(l) 14 E. 2. Baſtardy 26. Vid. Sect. 399.

¶ *Seiſie des terres.* (m) But in this caſe if the eldeſt ſon doth enter and get an actual poſſeſſion of the Fee ſimple, yet if the wife of the Father be endowed of the third part and the eldeſt ſon dieth, the younger Brother ſhall have the reverſion of this third part notwithſtanding the elder Brothers Entry, becauſe that his actual ſeiſin which he got thereby was by the endowment defeated. But if the eldeſt ſon had made a Leaſe for life, and the Leſſee had endowed the wife of the Father, and Tenant in dower had died, the daughter ſhould have had the reverſion, becauſe the reverſion was changed and altered by the Leaſe for life, and the reverſion is now expectant on a new eſtate for life.

(m) 7 H. 5. 2, 3, 4.

¶ *Enter.* Hereupon the queſtion groweth, whether if the Father be ſeiſed of divers ſeveral parcels of Land in one County, and after the death of the Father the ſon entreth into one parcel generally, and before any actual Entry into the other dieth, this general Entry into part ſhall veſt in him an actual ſeiſin in the whole, ſo as the Siſter ſhall inherit the whole. And this is a Quere in 21 H. 7. 33. 2.

21 H. 7. 33. 2.

And ſome do take a diverſity when any entry ſhall veſt or devеſt an eſtate, that there muſt be ſeveral entries in the ſeveral parcels, but where the poſſeſſion is in no man, but the freehold in Law is in the heir that entreth, there the general entry into one part reduceth all into his actual poſſeſſion. And therefore if the Lord entreth into a parcel generally for a Mortmain, or the Feoffor for a condition broken, or the Diſſeiſee into parcel generally, the entry ſhall not veſt or devеſt in theſe or like caſes, but for that parcel. But when a man dies ſeiſed of divers parcels in poſſeſſion, and the freehold in Law is by a Law caſt upon the heir, and the poſſeſſion in no man, there the entry into parcel generally ſæmeth to veſt the actual poſſeſſion in him in the whole. But if his entry in that caſe be ſpecial, viz. that he enter only into that parcel and into no more, there it reduceth that parcel only into actual poſſeſſion.

¶ *Home ſeiſie des terres.* What then is the Law of a Rent, Advowſon or ſuch things that lye in a grant? (g) If a Rent, or an Advowſon do deſcend to the eldeſt ſon, and he dieth before he hath ſeiſin of the Rent, or preſent to the Church, the Rent or Advowſon ſhall deſcend to the youngeſt ſon, for that he muſt make himſelf heir to his father, as hath been oftentimes ſaid before. The like Law is of Offices, Courts, Liberties, Franchiſes, commons of inheritance, and ſuch like. (h) And this caſe differeth from the caſe of the Tenant by the courteſie, for there if the wife dieth before the rent day, or that the Church become void, becauſe there was no laches or default in him, nor poſſibility to get ſeiſin, the Law in reſpect of the iſſue begotten by him will give him an eſtate by the Courteſy of England. But the caſe of the deſcent to the youngeſt ſon ſtandeth upon another reaſon, viz. to make himſelf heir to him that was laſt actually ſeiſed, as hath been ſaid.

(g) 19 E. 2. Quare Imped. 177. 3 H. 7. 5.

(h) 7 E. 3. 66. tit. bar. 293. 3 H. 7. 5.

¶ *En Fee ſimple.* (i) For half blood is not reſpected in eſtates in tail, becauſe that the iſſues do claim in by deſcent, per formam Doni, and the iſſue in tail is ever of the whole blood to the Donee.

(i) 8 E. 3. 11. 49 E. 3. 12. Ratcliffs caſe, lib. 3. f. 41.

¶ (k) *Poſſeſſio fratris de Feodo ſimplici facit ſororem eſſe hæredem.* Hereupon four things are to be obſerved, every word almoſt being operative and material. Firſt, That the brother muſt be in actual poſſeſſion: For Poſſeſſio eſt quaſi pedis Poſitio. Secondly, De feodo ſimplici, exclude eſtates in tail. Thirdly, Facit ſororem eſſe hæredem. So as (l) Soror eſt hæres facta, and therefore ſome act muſt be done to make her heir, and the younger ſon is hæres natus, (m) if no act be done to the contrary. And albeit the words be Facit ſororem eſſe hæredem, yet this doth extend to the iſſue of the ſiſter, &c. who ſhall inherit before the younger brother. Fourthly, Of Dignities whereof no other poſſeſſion can be had but ſuch as deſcend (as to be a Duke, Marquels, Earl, Viſcount, or Baron) to a man and his heirs, there can be no poſſeſſion of the brother to make the ſiſter to inherit, but the younger brother being heir (as Littleton ſaith) to the father, ſhall inherit the Dignity inherent to the bloud, as heir to him that was firſt created noble.

(k) Bracton, lib. 2. fol. 65. & lib. 4. fol. 279. Britton cap. 119. Fleta lib. 6. c. 1. 24 E. 3. 30.

(l) Ratcliffs caſe, lib. 3. fol. 43.

(m) Britton cap. 119.

And you ſhall underſtand that concerning Deſcents there is a Law, parcel of the Laws of England, called Jus Coronæ, and differeth in many things from the general Law concerning the Subject. As for example, The King in any Suit or any thing that pertains to the Crown ſhall not ſhew in certain his coſinage as a ſubject ſhall do, or as he himſelf ſhall do for things touching his Dutchy. (n) And in the caſe of the King if he hath iſſue a ſon and a daughter by one venter, and a ſon by another venter, and purchaſeth lands and dieth, and the eldeſt ſon enter and dieth without iſſue, the daughter ſhall not inherit theſe lands, nor any other fee ſimple lands of the Crown, but the younger brother ſhall have them. Wherein note, that neither poſſeſſio fratris doth hold of lands of the poſſeſſions of the Crown, nor half blood is no impediment to the deſcent to the lands of the Crown, as it fell out in experience after the deceaſe of King Edw. the ſixth to Queen Mary, and from Queen Mary to Queen Elizabeth, both which were of the half blood, and yet inherited not onely the Lands which King Edward or Queen Mary purchaſed, but the ancient Lands parcel of the Crown alſo.

6 H. 4. 2.

(n) 34 H. 6. fol. 34. Pl. Com. fol. 245. 25 E. 3. ca. de Natis ultra mare.

A man that is King by deſcent of the part of his mother, purchaſe lands to him and his heirs and dye without iſſue, this land ſhall deſcend to the heir of the part of the mother, but in the caſe of a Subject, the heir of the part of the Father ſhall have them.

Pl. Com. ubi ſupra.

So King Henry the eighth purchaſed Lands to him and his heirs, and died having iſſue two daughters, the Lady Mary, and the Lady Elizabeth, after the deceaſe of King Edward, the eldeſt daughter Queen Mary did inherit onely, all his lands in fee ſimple. For the eldeſt daughter, or ſiſter of a King ſhall inherit all his fee ſimple lands. So it is if the King purchaſed Lands of the cuſtom of Gavelkind, and dye having iſſue divers ſons, the eldeſt ſon ſhall onely inherit theſe Lands. And the reaſon of all theſe caſes is for that the quality of the perſon doth in theſe and many other like caſes alter the deſcent, ſo as all the Lands and poſſeſſions whereof the King is ſeiſed in jure Coronæ, ſhall ſecundum jus Coronæ attend upon and follow the Crown, and therefore to whomſoever the Crown deſcend, thoſe lands and poſſeſſions deſcend alſo, for the Crown and the Lands whereof the King is ſeiſed in jure Coronæ, are concomitantia. If the

Pl. Com. fol. 247.

right

right heir of the Crown be attainted of treaſon, yet ſhall the Crown deſcend to him, and ſo inſtante (without any other reverſal) the attainder is utterly avoided, as it fell out in the caſe of Henry the ſeventh. (o) And if the King purchaſe Lands to him and his heirs, he is ſeiſed thereof in jure Coronæ; à fortiori, when he purchaſes land to him, his heirs and ſucceſſors. Pl. Com. 238. 1 H. 7. fol. 4. (o) 43 H. 3. fol. 20.

But hereof this little taſte ſhall ſuffice.

Sect. 9.

¶ ET eſt aſcaboir que ť parol (enheritāce) neſt pas tātſolement entendue, lou home ad tēes ou tenements per diſtent denheritage, mes auri cheſcun fee ſimple, ou taile que home ad per ſon purchaſe puit eſtre dit enheritance, pur ceo que ſes heyres luy purtont inheriter. Car en Briefe de Droit que home porta de terre que fuit de ſon purchaſe demeſne, le bēe dirra: Quam clamat eſſe jus & hæreditatem ſuam. Et iſſint ſerra dit en divers autres briefs, qur hōe ou fēe porta ď ſ purchaſe demeſn, cōe apiert p le Regiſt.

AND it is to wit, that this word (*inheritance*) is not only intended where a man hath Lands or Tenements by deſcent of inheritage, but alſo every Fee ſimple or tail which a man hath by his purchaſe may be ſaid an inheritance; becauſe his heirs may inherit him. For in a Writ of right which a man bringeth of Land that was of his own purchaſe, the Writ ſhall ſay, *Quam clamat eſſe jus & hæreditatem ſuam.* And ſo ſhall it be ſaid in divers other Writs which a man or woman bringeth of his own purchaſe, as appears by the Regiſter.

¶ *ET eſt aſcavoir*, This kind of ſpæch is uſed twice in this Chapter, and oftentimes by our Author in all his three Books, and ever teacheth us ſome rule of Law or general or ſure leading Point, as you ſhall perceive by reading, and obſerving of the ſame, which for the eaſe of the ſtudious Reader, I have obſerved. Sect. 45, 46, 57, 59, 80, 100, 146, 164, 170, 184, 229, 243, 259, 274, 280, 293, 390, 305, 419, 420, 421, 489, 632, 697, 749.

¶ *Quam clamat eſſe jus & hæreditatem ſuam.* (a) Here our Author declareth the right ſignification of this word (inheritance.) And true it is, that in the Writ of right Patent, &c. Quando Dominus remittit Curiam ſuam, The words of the Writ be, Quam clamat eſſe jus & hæreditatem ſuam. And in the Præcipe in capite, in a Cui in vita, (b) when the Defendant claimeth by purchaſe, the Writ is Quam clamat eſſe jus & hæreditatem ſuam. And with Littleton agreeth the Regiſter, fol. 4. & 232. and the Book in 49 E. 3. 22. againſt ſodain opinions, 7 H. 4. 5. 10 H. 6, 9. 39 H. 6. 38. Pl. Com. Wimbeſhes caſe 47. And yet in 7 H. 4. 5. which is the Book of the greateſt weight. Sir William Thirning, Chief Juſtice of the Common Bench (as it ſeemeth doubting of it) went into the Chancery to enquire of the Chancery men the form of the Writ in that caſe, and they ſaid that the form was both the one way and the other, ſo as thereby the opinion of Littleton is confirmed, and the Book in 6 E. 3. fol. 30. is notable, for there in an Aſſion of waſte the Plaintiff ſuppoſed, that the Defendant did hold de hæreditate ſua, and it is ruled, that albeit the Plaintiff purchaſed the reverſion, yet the Writ ſhould ſerve. And there it is ſaid, It hath been ſeen, that in a Cui in vita, the Writ was, which the Demandant claimed as her right and inheritance, when it was her purchaſe. And ſo this point wherein there might ſeem ſome contrariety in Books is manifeſtly cleared. But in the Statute of W. 2. cap. 5. de hæreditate uxorum, by conſtruction of the whole. Statutes is taken onely for the wives inheritance by deſcent: and not by purchaſe, as appeareth in 1 E. 2. tit. Quare imped. 43. 35 H. 6. 54 F. N. B. 34. b.

(a) Sect. 732. Bract. lib. 2. fol. 62. b. Fleta lib. 6. cap. 1.

(b) Regiſt. fol. 1. 2.

Regiſt. fol. 4. 232. 49 E. 3. 22. 7 H. 4. 5. 10 H. 6. 9. 39 H. 6. 38. 6 E. 3. 30. Pl. Com. Wimbeſhes Caſe. 47 & 58. b.

6 E. 3. 33.

W. 2. Cap. 5. 1 E. 2. tit. Quare imped. 43. 35 H. 6. 54. F. N. B. 34. B.

There be ſome that have an inheritance, (c) and have it neither by deſcent, nor properly by purchaſe, but by Creation, as when the King doth create any man a Duke, a Marqueſſe, Earl, Viſcount, or Baron to him and his heirs, or to the heirs males of his body, &c. he hath an inheritance therein by Creation. A man may have an inheritance in title of Nobliey and Dignity, three manner of ways, that is to ſay, by Creation, by Deſcent, and by Pre-

(c) Lib. 6. fol. 52. 53. Counteſs de Rutlands Caſe, lib. 8. fol. 16. 17. the Princes Caſe.

Preſcription. By Creation two manner of ordinary ways (for I will not ſpeak of a Creation by Parliament) by Writ, and by Letters Patents. Creation by Writ, is the ancienter way; and here it is to be obſerved, that a man ſhall gain an inheritance by Writ. King Richard the ſecond, created John Beauchampe de Holte Baron of Kedermiſter by his Letters Patents, bearing date the 10. of Octob. anno regni ſui 11. before whom there was never any Baron created by Letters Patents, but by Writ. And it is to be obſerved, that if he be generally called by Writ to the Parliament, he hath a Fee ſimple in the Barony without any words of inheritance. But if he be created by Letters Patents, the ſtate of inheritance muſt be limited by apt words, or elſe the grant is void. If a man be called by Writ to the Parliament, and the Writ is delivered unto him, and he dieth before he cometh and ſits in Parliament, whether he was a Baron or not. And it is to be anſwered, that he was no Baron, for the direction and delivery of the Writ to him maketh not him Noble: for the better underſtanding whereof, it is to be known that the words of the Writ in that caſe are, Rex, &c. E. B. de D. Chivalier ſalutem. Quia de adviſamento & aſſenſu conſilii noſtri quibuſdam arduis & urgentibus negotiis ſtatum & defenſionem regni noſtri Angliæ, &c. concernentibus quoddam Parliamentum noſtrum apud Civitatem Weſtm̃ à 21. Octob. proxim. futuro teneri ordinavimus, & ibid. vobiſcum & cum Prælatis, Magnatibus, & Proceribus dicti regni noſtri colloquium habere & tractatum, vobis in fide & ligeancia quibus nobis tenemini firmiter injungendo mandamus, quod conſideratis dictorum negotiorum arduitate & periculis imminentibus, ceſſante excuſatione quacunque, dictis die & loco perſonaliter interſitis nobiſcum & cum Prælatis, Magnatibus, & Proceribus ſupra dictis, ſuper dictis negotiis tractatur' veſtrumque concilium impenſur', &c. And this Writ hath no operation or effect, untill he ſit in Parliament, and hereby his bloud is ennobled to him and his Heirs lineall, and thereupon a Baron is called a Peer of Parliament. (d) And if iſſue be joyned in any action, whether he be a Baron, &c. or no, it ſhall not be tried by Jury, but by the Record of Parliament, which could not appear, unleſs he were of the Parliament. Therefore a Duke, Earl, &c. of another Kingdom, are not to be ſued by thoſe names here, for that they are not Peers of our Parliament. And albeit the Creation by Writ is the ancienter, yet the Creation by Letters Patents is the ſurer, for he may be ſufficiently created by Letters Patents, & made Noble, albeit he never ſit in Parliament.

Lib.6.fol.52, 53, Counteſs of Rutlands Caſe.
8 H. 6.10. 48 E. 3.30.
35 H.6. 46. Pl. Com.223.

(d) 35 H. 6. 46.
48 E.3. 30. b.
48 Aſſ. p. 6. 22. Aſſ. p. 24.
Regiſt. 287.
11 E. 3. breve 472.
20 E. 4. 6.

(e) And it is to be obſerved, that Nobility may be granted for term of life, by act in Law, without any actual Creation; as if a Duke take a wife, by the intermarriage ſhe is a Dutcheſs in Law, and ſo of a Marquels, an Earl, and the reſt, and in ſome other caſes. And there is a diverſity betwæn a woman that is noble by Deſcent, and a woman that is noble by marriage. (f) For if a woman that is noble by Deſcent, marry one that is under the degree of Nobility, yet ſhe remaineth Noble ſtill; but if ſhe gain it by marriage, ſhe loſeth it; if ſhe marry under the degree of Nobility, and ſo is the rule to be underſtood, Si mulier nobilis nupſerit ignobili, deſinit eſſe nobilis. (g) But if a Dutcheſs by marriage marrieth a Baron of the Realm, ſhe remaineth a Dutcheſs, and loſeth not her name, becauſe her Huſband is Noble, & ſic in cæteris.

(e) Lib.6. fo'.52,53. Counteſs of Rutlands Caſe.
2 H.6.11.22. Aſſ. 24.
12 E. 3. breve 254.
8 H. 4. 19. 11 H.4.15.
Vide Fleta lib.6. cap.10.
(f) Lib. 4. fol. 118. Actons Caſe, Tempore Mariæ Reginæ.
Brooke noſme de dignity 69.
14 H.6. 18. 2 H. 6.11.
(g) 22 H. 6. 52.

And as an eſtate for life may be gained by marriage, ſo may the King create either man or woman noble for life, (b) but not for years, becauſe then it might go to Executors or Adminiſtrators. The true diviſion of perſons is, that every man is either of Nobility, that is, a Lord of Parliament of the upper Houſe, or under the degree of Nobility, amongſt the Commons, as Knights, Eſquires, Citizens and Burgeſſes of the lower Houſe of Parliament, commonly called the Houſe of Commons, and he that is not of the Nobility is by intendment of Law amongſt the Commons.

(h) Lib.9. fol.97, 98.
Sir George Reynels Caſe.

¶ *Come apiert per le Regiſt.* Which Book in the Statute of W. 2. cap. 24. is called Regiſtrum de Cancellaria, becauſe it containeth the forms of Writs at the Common Law that iſſue out of the Chancery, tanquam ex officina Juſtitiæ. There is a Regiſter of originall Writs, and a Regiſter of judiciall Writs; but when it is ſpoken generally of the Regiſter, it is meant of the Regiſter original. For the antiquity and excellency of this Book, ſee in my Preface to the eighth part of my Commentaries. This excellent Book our Author voucheth divers times in theſe Books, and ſo doth he divers other Authorities in Law of ſeveral kinds. but with this obſervation, that he citeth no Authority; but when the caſe is rare, or may ſeem doubtful, which appeareth in this, that he putteth no Caſe in all his three Books, but hath warrant of good Authority in Law: For he knew well the rule, that Perſpicua vera non ſunt probanda. And the like obſervation is made of Juſtice Fitzherbert in his Book of Natura Brevium, that he never citeth Authority, but when the caſe is rare, or was doubtful to him. The Authorities which our Author hath cited in his three Books, I have collected.

Vide Sect. 88.94,96,101,157, 234,318,383, 412, 420, 433, 514,643,644,657, 660, 692, 702, 729.

Sect. 10.

Sect. 10.

¶ ET de tiels choſes de queux hõe poit aver un manuel occupation poſſeſſion ou reſceit, ſicõe des terres, tenements, rents, & hujuſmodi, la home dirá en court countant, & en plee pledant, que un tiel fuit ſeiſie en ſon demeſne come de fee. Mes de tiels choſes que ne giſont en tiel Manuel occupation, &c. ſicome de advowſon deſgliſe, & hujuſmodi, la, il dirra que il fuit ſeiſie come de fee, & nemy en ſon demeſne come de fee, & en Latin il eſt en lun cas, Quod talis ſei ſitus fuit, &c. in dominico ſuo ut de feodo & en lauter caſe, quod talis ſeiſitus fuit, &c. ut de feodo.

AND of ſuch things whereof a man may have a Manuel occupation, poſſeſſion or receipts, as of lands, Tenements, Rents, and ſuch like, there a man ſhall ſay in his Count Countant and Plea Pleadant, that ſuch a one was ſeiſed in his demeſne as of fee: but of ſuch things which do not lye in ſuch Manual occupation, &c. as of an advowſon of a Church, and ſuch like, there he ſhall ſay, that he was ſeiſed as of fee, and not in his Demeſne as of fee. And in Latine it is in one Caſe, *Quod talis ſeiſitus fuit, &c. in dominico ſuo ut de feodo*, and in the other Caſe, *Quod talis ſeiſitus fuit, &c. ut de feodo.*

¶ IN Count Cõuntant. Count, i. narratio commeth of the French word Conte, which in Latine is Narratio, and is vulgarly called a Declaration. The original writ is according to his name Breve, brief and ſhort, but the Count which the Plaintiff or Demandant make is more narrative and ſpacious, and certain both in matter and in circumſtance of time and place, to the end, the defendant may be compelled to make a more direct anſwer; ſo as the Writ may be compared to Logick, and the Count to Rhetorick; and it is that which the Civilians call a Libel. And in that ancient book of the Mirrour of Juſtices, Lib. 2. cap. des Loiers, Contors are Serjeants ſkilful in Law, ſo named of the Count as of the principal part, and in W. 2. cap. 29 he is called Serjeant Counter. Mirrour de des Juſtices. W. 2. cap. 29.

¶ *En plea pleadant.* Placitum, Here Littleton teacheth good pleading in this point, of which in his third Book and Chapter of Confirmation, Sect. 534. he thus ſaith, Et ſaches mon fits que eſt un des pluis honorables, laudables, & profitable choſes en noſtre Ley, de aver le ſcience de bien pleade, en actionis reals & perſonels, & pur ceo jeo toy counſaile eſpecialment de mettera ton courage, & cure de ceo apprender bene placitare ſuper omnia placet; And for this cauſe this Word Placitum is derived à placendo, quia and it is not, as ſome have ſaid, ſo called per Antiphraſin, quia non placet.

¶ *Seiſie*; Seiſirus cometh of the French word ſeiſin i. poſſeſſio, ſaving that in the Common law ſeiſed, or ſeiſin, is properly applyed to Freehold, and poſſeſſed or poſſeſſion properly to goods and chattels; altheugh ſometime the one is uſed in ſtead of the other. Bract. lib. 4. fol. 263. Idem lib. 5. fol. 372. Britton fol. 205, 206. Fleta, lib. 5. cap. 5.

¶ *En ſon demeſne come de fee*, In Dominico ſuo ut in feodo. Dominicum is not only that inheritance, wherein a man hath proper dominion or ownerſhip, as it is diſtinguiſhed from the lands which another doth hold of him in ſervice, but that which is manual occupied, manured, and poſſeſſed for the neceſſary ſuſtentation, maintenance and ſupportation of the Lord and his houſhold, and ſavoureth de domo, of the houſe, either ad menſam, for his or their board and ſuſtentation, or manually received (as rents) for bearing and defraying of neceſſary charges publick or private. Of theſe (ſaith our Author) he ſhould plead, that he is ſeiſed in dominico ſuo ut de feodo, i. de feodo dominicali, ſeu terra dominicali ſeu reditu dominicali, which is as much to ſay as Demeyne or Demaine, of the hand, i. manured by the hand, or received by the hand, and therefore he calleth it manual occupation, poſſeſſion, or receit. And in Domeſday, Demeane-land is called Inland, as for example, 4. bovatæ terræ de Inland, and 10. bovatas in ſervitio. Pl. Com. fol. 191. Wroteſleyes caſe. Domeſday.

¶ *En tiel manuel occupation*, &c. There is nothing in our Author but is worthy of

of obſervation, here is the firſt (&c) and there is no (&c) in all his three Books (there being as you ſhall perceive very many) but it is for two purpoſes. Firſt, it doth imply ſome other neceſſary matter. Secondly that the Student may together with that which our Author hath ſaid, inquire what authorities there be in Law that treat of that matter, which will work three notable effects: Firſt, it will make him underſtand our Author the better: Secondly, it will exceedingly add to the Readers invention. And laſtly, it will faſten the matter more ſurely in his memory: for which purpoſe, I have for his eaſe in the beginning ſet down in theſe Inſtitutes, the effect of ſome of the principal authorities in Law, as I conceive them concerning the ſame. In this place the (&c.) implyeth poſſeſſion or receipt, and ſuch other matter as appeareth by my notes in this Section. As for the Authorities of Law, you ſhall find the effect of them in this Section, and the like of the reſt of the (&c.) which you ſhall find in the Sections hereafter mentioned, omitting theſe (for avoiding of tediouſneſs) that either are apparent, or which are explained in ſome other places. viz. Sect. 20. 48. 102. 108. 120. 125. 136, 137. 146. 149. 154. 164. 166, 167, 168. 177. 179. 183, 184. 194. 200. 202. 210, 211. 217. 220. 226. 233. 240. 242. 244, 245. 248. 262. 264. 269. 270, 271. 279. 320. 322, 323, 325, 326, 327. 329, 330. 335, 336. 341. 347, 348, 349. 352, 353. 356. 359. 364. 365. 374, 375. 377. 381. 384. 389, 393. 395. 397. 399. 401, 402. 410. 417. 418. 433. 447. 449. 464. 470, 471. 477. 483. 489. 500, 501, 522. 532. 552, 553, 556. 558. 562. 578. 591, 592, 593, 594. 603. 613. 624, 625. 630. 632. 634. 637, 638. 648. 659. 660, 661. 669. 687. 693. 700, 718. 745. 748, 749. All which I have obſerved and quoted here once for all for eaſe of the ſtudious Reader.

Britton 205. 206. optime.
Fleta lib. 6. cap. 5.
Idem lib. 3. cap. 15.

¶ *Ut de feodo.* Where (ut) is not by way of ſimilitude, but to be underſtood poſitively that he is ſeiſed in fee. And ſoit is where one pleads a deſcent to one ut filio & hæredi, that is, to Jo. S. that is, ſon and heir, & ſic de cæteris, where (ut) denotat ipſam veritatem.

(i) 7 E. 3. 63. 24 E. 3. 74. 34 H. 6. 34. 19 E. 3. Quar. imp. 154. Mirrour cap. 2. ſect. 17.

¶ *Si come de advowſon.* Of an Advowſon (i) wherein a man hath as abſolute ownerſhip and property, as he hath in Lands or Rents; yet he ſhall not plead, that he is ſeiſed in Dominico ſuo ut feodo, becauſe that inheritance, ſavouring not de domo, cannot either ſerve for the ſuſtentation of him and his houſhold, nor any thing can be received for the ſame for defraying of charges. And therefore he cannot ſay, that he is ſeiſed thereof in dominico ſuo ut de feodo, whereby it appeareth how the Common Law doth deteſt Simony, and all corrupt bargains for preſentations to any Benefice, but that (k) idonea perſona, for the diſcharge of the Cure ſhould be preſented freely without expectation of any thing; nay, ſo cautious is the Common Law in this point that the Pl. in a Quare impedit ſhould recover no damages for the loſſe of his preſentation, until the ſtatute of W. 2. cap. 5. And that is the reaſon that Gardian in Socage (l) ſhall not preſent to an Advowſon, becauſe he can take nothing for it, and by conſequent he cannot account for it. And by the Law he can meddle with nothing that he cannot account for. (m) And in a writ of right of Advowſon, the Patron ſhall not alleage the expleas, or taking of the profits in himſelf, but in his Incumbent. And hereby the old Books ſhall be the better underſtood, viz. Bract. lib. 4. tract. 3. cap. nu. 5. Eſt autem Dominicum quod quis habet ad menſam, & proprie ſicut ſunt Woodlands Anglice. And Fleta lib. 5. cap. 5. Eſt autem dominicum proprie terra ad menſam aſſignata. Dominicum etiam dicitur, ad differentiam ejus quod tenetur in ſervitio. But of an Advowſon and ſuch like he ſhall plead, that he is ſeiſed de advocatione ut de feodo & jure.

(k) Lib. 6. fol. 51. Boswels caſe.

(l) 8 E. 2. Preſentment al Egliſe 10. 7 E. 3. 39. 27 E. 3. 89. 29 E. 3. 5. 31 E. 3. Eſtoppel 240.

(m) 7 E. 3. 63. Bracton 263. 372. Fleta lib. 5. cap. 5.

7 E. 3. 4. 45 E. 3. 2.

¶ *Advowſon.* Advocatio, ſignifying an advowing or taking into protection, is as much as jus patronatus. Sir William Herle in 7 E. 3. fol. 4. ſaith that it is not long paſt, that a man did know what an Advowſon was; but when a man would grant an Advowſon, he granted Eccleſiam the Church, and thereby the Advowſon paſſed. Vide 45 E. 3. 5. But ſurely the word is of greater antiquity, for in the Regiſter there is an original Writ de recto Advocationis, and in the original Writ of Aſſiſe de darreine preſentment, the Patron is called Advocatus. (n) Vide W. ca. 5. And ſo doth (o) Bracton call him. Advocatus autem dici poterit ille ad quem pertinet jus advocationis alicujus, ut ad Eccleſiam præſentet nomine proprio & non alieno. And (p) Fleta lib. 5. cap. 14. agreeth herewith almoſt totidem verbis: Advocatus eſt ad quem pertinet jus advocationis alterius Eccleſiæ, ut ad Eccleſiam nomine proprio non alieno poſſit præſentare. And (q) Brittonis cap. 92. The Patron is called Avow, and the Patrons are called Advocati, for that they be either Founders or Maintainers, or Benefactors of the Church either by building, donation, or increaſſing of it, in which reſpect they were alſo called Patroni, and the advowſon Jus patronatus.

(n) W. 2. cap. 5.
(o) Bract. lib. 4. fol. 240.
(p) Fleta lib. 5. cap. 14.
(q) Britton cap. 92.
(r) 33 H. 6. 11. b. per Priſot. 14 H. 6. 15. per Newton. 31 E. 1. droit 68, 69. F. N. B. 31. b. Lib. 10. 135, 136. R. Smiths caſe. 45 E. 3. Fines 41. 45 E. 3. 12. 17 E. 3. 78. 17 E. 2. Dower. 163.

And it is to be underſtood that there is a great (r) diverſity inter advocationem medietatis Eccleſiæ, &c. & medietatem advocationis Eccleſiæ. And of their ſeveral remedies for the ſame. For the advowſon of the moyetie is when there be ſeveral Patrons, and two ſeveral Incumbents in one Church, the one of the one moyetie thereof, and the other of the other moyetie, and one part

part aſwell of the Church as of the Town allotted to the one, and the other part thereof to the other, and in that caſe each Patron if he be diſturbed ſhall have a Quare impedit, quod permittat ipſum præſentare idoneam perſonam ad medietatem Eccleſiæ.

But if there be two Coparceners, and they do agree to preſent by turn, each of them in truth hath but a moyety of the Church, but for that there is but one Incumbent, if either of them be diſturbed, he ſhall have a Quare impedit, &c. præſentare idoneam perſonam ad Eccleſiam; for that there is but one Church, and one Incumbent, and ſo of the like. But in (f) the ſaid caſe of two Coparceners, one of them ſhall have a Writ of right of Advowſon, de medietate advocationis, for in truth ſhe hath but a right to a moiety; but in the other caſe, where there be two Patrons and two Incumbents in one Church, each of them ſhall have a Writ of right of Advowſon, De advocatione medietatis.

(f) Britton, fol.235. 21 E. 1. droit. 68,69. F. N. B. 31. b. c. 33, a. 5 H. 7. 8. 17 E. 3. 38, 75, 76. 7 E. 3. 327. 8 E. 3. 425. 22. Aſſ. p. 33. 14 H. 4. 10. 33 E. 3. Quar. imp. 196.

And as there may (as hath been ſaid) be two ſeveral Parſons in one Church, ſo there may be two that may make but one Parſon in one Church. (t) Britton ſaith, Si aſcun Egliſe ſoit done a divers perſons per un ſole avowe nul ne ſe pura pleadre per aſſiſe de juris utrum ne nul eſtre implede ſauns lautre, &c. And therewith agreeth Fleta, (u) Item licet aliqua Eccleſia diviſa fuerit inter duos, ſive bona ſua habeant communia ſive ſeparata, dum tamen unicum habeant advocatum nullus eorum ſine alio agere poterit vel implacitari. And Fitzh. ſaith, that two Prebendaries may be one Parſon of a Church, who ſhall joyn in a Juris utrum, ſo as one Rectory may be annexed to two ſeveral Prebends, and both of them make but one Parſon. But where one is Parſon of the one moytie of a Church, and another of the other moytie, as hath been ſaid, there one of them ſhall have a Juris utrum againſt the other, and in the Writ ſhall name him perſona medietatis Eccleſiæ, &c. But for avoiding of ſuſpition of curioſity, if we ſhould proceed any further herein, we will attend what Littleton will further teach us.

(t) Britton, fol.235.
(u) Fleta. lib. 5. cap.19.

F. N. B. 49. o.

F. N. B. 49. p.

Sect. 11.

¶ Et nota que hõe ne poit aũ pluis ample ou pluis griender eſtate denheritance, que Fee ſimple.

¶ AND note, that a man cannot have a more larger or greater eſtate of inheritance then Fee ſimple.

¶ This doth extend as well to Fee ſimples conditional and qualified, as to Fee ſimples pure and abſolute. For our Author ſpeaketh here of the ampleneſſe and greatneſſe of the eſtate, and not of the perdurableneſſe of the ſame. And he that hath a Fee ſimple conditional or qualified, hath as ample and great an eſtate as he that hath a Fee ſimple abſolute, ſo as the diverſity appeareth between the quantity and quality of the eſtate. From this ſtate in Fee ſimple, eſtates in tail, and all other particular eſtates are derived, and therefore worthily our Author beginneth his firſt Book with Tenant in Fee ſimple, for à principalioribus ſue dignoribus eſt inchoandum.

¶ *Ne poit aver pluis ample ou griender eſtate, &c.* For this cauſe two (a) Fee ſimples abſolute cannot be of one and the ſelf-ſame land. If the King make a Gift in tail, and the Donee is attainted of Treaſon, in this caſe the King hath not two ſimples in him, viz. the antient reverſion in Fee, and a Fee ſimple determinable upon the dying without iſſue of Tenant in tail, but both of them are conſolidated and conjoyned together; and ſo it is if ſuch a Tenant in tail doth not convey the Land to the King, his Heirs and Succeſſors, the King hath but one eſtate in Fee ſimple united in him, and the Kings Grant of one eſtate is good, and ſo was it adjudged in the Court of Common Pleas. And yet in ſeveral perſons by act in Law, a reverſion may be in Fee ſimple in one, and a Fee ſimple determinable in another by matter Ex poſt facto; as if a Gift in tail be made to a Villain, and the Lord enter, the Lord hath a Fee ſimple qualified, and the Donor a reverſion in fee; but if the Lord infeoff the Donor, now both Fee ſimples are united, and he hath but one Fee ſimple in him: but one Fee ſimple cannot depend upon another by the Grant of the party; as if Lands be given to H. ſo long as B. hath Heirs of his body, the remainder over in fee, the remainder is void.

(a) Pl. Com. 349, & 248. 19 H. 8. Dier. 4. 29 H. 8. Dier. 33. 16 Eliz. Dier. 330. 2 Mary Dier. 107. Auſtens Caſe. Pa. 38 Eliz. Rot. 108. In Quar. imp. between the Queen, Pl. and the Biſhop of Lincoln, Huſſey and others Def. 15 E. 4. 6. 8.

Sect. 12.

¶ Item purchaſe eſt appel la poſſeſſion de terres ou

ALſo purchaſe is called the poſſeſſion of Lands or Tene-

¶ Purchaſe in Latine is either acquiſitum, of the verb acquiro, for ſo I find it in the original Regiſter 243. In terris vel tenementis quæ viri

viri & mulieres conjunctim acquiſiverunt, &c. Bracton, calleth it perquiſitum; and by (b) Glanvil, it is called quæſtus or perquiſitum.

Bracton, lib. 2. fol. 65.
(b) Glanvil, lib. 7. cap. 1.
Britt. c. 33. fol. 84, & 121.

A purchaſe is always intended by Title, and moſt properly by ſome kind of conveyance either for money or ſome other conſideration, or freely of Gift: for that is in Law alſo a purchaſe. But a deſcent, becauſe it cometh merely by act of Law, is not not ſaid to be a purchaſe, and accordingly the makers of the act of Parliament in 1 H. 5. cap. 5. ſpeaketh of them that have Lands or Tenements by purchaſe, or deſcent of inheritance. And ſo it is of an Eſcheat, or the like, becauſe the inheritance is caſt upon, or a little veſted in the Lord by act in Law, and not by his own Deed or agreement, as our Author here ſaith; Like Law of the ſtate of Tenant by the Courteſie, Tenant in Dower, or the like. But ſuch as attain to Lands by meer injury and wrong, as by diſſeiſin, intruſion, abatement, uſurpation, &c. cannot be ſaid to come in by purchaſe, no more than Robbery, Burglary, Pyracy, or the like, can juſtly be

Pl. Com. Wimbiſhes Caſe, 47. b.
1 H. 5. cap. 5.

If a Noble[illegible]quire, &c. be buried in a Church, and have his Coat armor and Pennons with his arms, and ſuch other enſigns of honour as belong to his degree or order ſet up in the Church, or if a Grave-ſtone or Tomb be laid or made, &c. for a monument of him. (c) In this caſe, albeit the Freehold of the Church be in the Parſon, and that theſe be annexed to the Freehold; yet cannot the Parſon, or any take them, or deface them but he is ſubject to an action to the heir, and his heirs in the honor & memory of whoſe Anceſtor they were ſet up. And ſo it was holden Mic. 10. Ia. and herewith agreeth the Laws (d) in other Countreys. Note this kind of inheritance: and ſome hold, that the wife or Executors that firſt ſet them up may have an action in that caſe againſt thoſe that deface them in their time. And note, that in ſome places chattels, as heir-looms (as the firſt beſt bed, table, pot, pan, cart and other dead chattels moveable) may go to the heir, and the heir in that caſe may have an action for them at the Common Law, and ſhall not ſue for them in the Eccleſiaſtical Court, but the heir-loom is due by Cuſtom, and not by the Common Law. And the (c) ancient jewels of the Crown are heir-looms, and ſhall deſcend to the next Succeſſor, and are not deviſable by Teſtament.

(c) 9 E. 4. 24.

Mic. 10. Jac. Obiter in Com. Banc. in Pyms Caſe.
(d) B. Caſſanæus, fol. 13. Conc. 29.
30 E. 3. 2, & 3.
39 E. 3. 6, 9, 10.
1 H. 5. tit. Executors 108. tit Deſcent. Br. 43.
9 E. 4. 15. Madam Wiches caſe.
(e) Vide 28 H. 8. 24.

An heir-loom is called principalium or hæreditarium.

Conſuetudo hundredi de Stretford in Com' Oxon eſt, quod hæredes tenentorum infra hundredum prædictum exiſten poſt mortem anteceſſorum ſuorum habebunt, &c. principalium, Anglice an heir-loom, viz. De quodam genere catallor, utenſilium, &c. optimum plauſtrum, optimam carucam, optimum ciphum, &c.

Int. adjudicata coram. Rege Tr. 41 E. 3. lib. 2. fol. 104. in Theſaur. Seſt. 241, 242, &c.

Our Author hath not ſpoken of Parceners in this Chapter, for that he hath particular Chapters of the ſame.

Gradus Parentelæ, &c.

Chap. 2. Sect. 13.

¶ *Tenant en Fee taile.* Tallium, or Feodum talliatum, is derived of the French word tailler, ſcindere, for ſo Littleton himſelf in this Chapter, Sect. 18. ſaith.

Mirrour, cap. 2. ſect. 15, & cap. 1. ſect. 3.

¶ *Le Statute de W. 2.* This Statute was made in 13. E. 1. and is called Weſt. 2. becauſe the Parliament was

¶ Tenant in Fee taile eſt p̄ force de le ſtatute de Weſt. 2. cap. 2. Car devant l' dit ſtatute, touts Enheritantes fuek Fee ſimple; car touts les dones q̄ ſont ſpecifies deins

¶ Tenant in Fee Taile is by force of the Statute of *W.* 2. *Cap.* 1. for before the ſaid Statute, all inheritances were Fee ſimples for all the Gifts which be ſpecified in that ſtatute were Fee ſimple

ñ l' ſtat

Gradus Parentelæ & Conſanguinitatis,

pro meliori intelligentia Authoris noſtri.

The degrees of Parentage and of Conſanguinity, for the better underſtanding of our Author.

Approved by
Bracton, lib. 2. cap. 31. fol. 67.
Britton, cap. 89. fol. 220, 221.
Fleta, lib. 5. cap. 7.
Mirror, *c.* 1. *ſe.* 3. & que herit.

Adgnati ex parte Patris.
Couſins on the part of the Father, the more worthy in Diſcents, though farther remote.

Cognati ex parte Matris.
Couſins on the part of the Mother the leſs worthy in Diſcents, though neerer of kin.

Recta Linea. The right Line.

Linea tranſverſalis ſeu collateralis
The ſide Line.

Abpatruus magnus.
The great Uncles Grand-father on the Fathers ſide.

Abamita magna:
The great Uncles Grand Mother on the Fathers ſide.

Tritavus.
The great Grand-fathers great Grand-father.

Tritavia.
The great Grand-fathers great Grand-mother.

Linea tranſverſalis ſeu collateralis.
The ſide Line.

Abavunculus.
The great Uncles Grand-father on the Mothers ſide.

Abmatertera magna.
The great Uncles Grand-mother on the Mothers ſide.

6

Attavus.
The great Grand-fathers G and-father.

Attavia.
The great Grand-fathers Grand-mother.

5

Propatruus magnus.
The great Uncles Father on the Fathers ſide.

Proamita magna.
The great Uncles Mother on the Fathers ſide.

Avus.
The great Grand-father Father.

Avia.
The great Grand-fathers Mother.

4

Proavunculus magnus.
The great Uncles Father on the Mothers ſide.

Promatertera magna.
The great Uncles Mother on the Mothers ſide.

Patruus magnus.
The great Uncle on the Fathers ſide.

Amia magna.
The great Aunt on the Fathers ſide.

Proavus.
The great Grand-father.

Proavia.
The great Grand-moher.

3

Avunculus magnus.
The great Uncle on the Mothers ſide.

Matertera magna.
The great Aunt on the Mothers ſide.

Avus.
The Grand-father.

Avia.
The Grand-Mother.

2

Patruus.
The Uncle or Fathers Brother.

Amita.
The Aunt or Fathers Siſter.

Pater.
Father.

Mater.
Mother.

1

Avunculus.
The Uncle or Mothers Brother.

Matertera.
The Aunt or Mothers Siſter.

Linea recta aſcendens.
The right Line aſcending.

Patrueles a Patruo.
Sons or Daughters, Couſin Germans on the Fathers ſide.

Amitini ab Amita.
ons or Daughters, Couſin Germans on the Father ſide.

Linea tranſverſalis, ſeu collateralis.
The ſide Line.

Frater a Brother.
Semi germanus frater. Brother of one Father, and ſeveral Mothers. *Soror.* Siſter.

Frater, a Brother.
uterinus frater. Brother of one Mother and ſeveral fathers. *Soror.* Siſter.

Linea tranſverſalis, ſeu collateralis.
The ſide Line.

Avunculini ab Avunculo.
Sons or Daughters, Couſin Germans on the Mothers ſide.

Materterini a matertera.
Sons or Daughters, Couſin Germans on the Mothers ſide.

Horum.
Of theſe.
Filius.
The Son.
Filia.
The Daughter right Couſin Ger.

Propo-

Linea recta
The right Line.

ſitus.

diſcendens.
diſcending.

Horum
Of theſe.
Filius.
The Son.
Filia
The Daughter rig ht Couſin German.

Eorum.
Of theſe.
Nepos collat.
The collateral Nephew
Neptis collat.
The collateral Neece.

Filius.
Son.

Filia.
Daughter.

1

Eorum
Of theſe.
Nepos collat.
The collateral Nephew.
Neptis collat.
The collateral Neece.

Nepos linealis.
The lineal Nephew.

Neptis linealis.
The lineal Neece.

2

Pronepos linealis.
The lineal Nephews or Nieces ſon

Proneptis lienealis.
The lineal Nephews or Neeces Daughter.

3

orundem
Of theſe
ronepos collat.
The collateral Nephews Son.
Proneptis collat.
The collateral Nephews Daughter.
Et ſic in infinitum.

Abnepos linealis.
The grand ſon of the lineal Nephew or Neece

Abneptis linealis.
The grand Daugh. of the lineal Neph. or Neece

4

Atnepos linealis.
The great grand ſon of the lineal Nephew or Neece

Atneptis linealis.
The great grand Daugh. of the lineal Neph. or Neece

5

Trinepos linealis.
The great great grand Son of the lineal Nephew or Neece. *Et ſic in infinitum.*

Trineptis linealis.
The great great grand Daughter of the lineal Nephew or Neece. *Et ſic in infinitum.*

6

Eorundem.
Of theſe.
Pronepos collat.
The collateral Nephews ſon
Proneptis collat.
The collateral Nephews Daughter.
Et ſic in infinitum.

Place this next before Folio 19.

m̃ l' ſtat, fuer fee ſimple conditional al cõmon ley, cõe appiert p l' rehearſal d̃ m̃ l' ſtatute. Et oze per cel ſtat tenãt en le taile eſt en deux maniſ, ceſtaſcavoir, tenant en taile general, & tenãt en taile especial.

conditional at the Common Law, as appeareth by the rehearſal of the ſame Statute. And now by this Statute, tenant in taile is in two manners, that is to ſay, Tenant in tail general, and tenant in tail ſpecial.

holden at Weſtminſter, & hath the name of the ſecond, becauſe another Parliament was formerly holden at Weſtminſter in the third year of the ſame Kings reign which was called Weſtminſter the firſt. And albeit many Parliaments were after holden at Weſtminſter beſides theſe, yet were they two only, propter excellentiam, called the Statutes of Weſtminſter. And the Act intended by Littleton, is W.2. cap.1. Upon which ſtatute our Author in the Inner Temple did learnedly read, whoſe reading I have. Of King Edw.1. and of this ſtatute, Sir William Herle chief Juſtice of the Court of Common Pleas, in 5 E.3.14. ſaith. That King E.1. was the wiſeſt King that ever was: and the cauſe of the making of this ſtatute, was to preſerve the Inheritance in the blood of them to whom the gift was made: And in 9 E.3.22. he ſaith, That they were ſage men that made this ſtatute. See more of this in the Chapter of Warranties, Sect. 746. 5 E.3.14. 9 E.3.22.

Of this eſtate Tail it is ſaid, (a) Modus legem dat donationi, & tenend' eſt etiam conventio, quia Modus & Conventio vincunt legem: Ut ſi alicui cum uxore fiat donatio, habendum & tenendum ſibi & hæredibus, quos inter eos legitimè procreabunt, ecce quod donator vult tales hæredes in hæreditate paterna & materna ſuccedant, aliis hæredibus eorum remotioribus penitus excluſis: Et quod voluntas donatoris obſervari debet, manifeſtè apparet per hæc Statuta: quia autem dudum Regi durum videbatur, &c. (a) Fleta lib.3. cap.4. Bract. lib.2. cap.5, &c. Brit.ca.24. & 36.

¶ *Devant le dit Statute* (b) *touts Inheritances fueront Fee ſimple.* Here Fee ſimple is taken in his large ſenſe, including as well conditional or qualified, as abſolute, to diſtinguiſh them from eſtates in tail ſince the ſaid ſtatute. Before which ſtatute of Donis conditionalibus, If land had been given to a man, and to the heirs males of his body, the having of an iſſue female had been no performance of the Condition, but if he had iſſue male, and died, and the iſſue male had inherited, yet he had not had a Fee ſimple abſolute: (c) for if he had died without iſſue male, the Donor ſhould have entred as in his reverter. By having of iſſue, the Condition was performed for three purpoſes: Firſt, to alien: Secondly, to forfeit, Thirdly, to charge with Rent, Common, or the like. But the courſe of deſcent was not altered by having iſſue: for if the Donee had iſſue and died, and the land had deſcended to his iſſue, (d) yet if that iſſue had dyed (without any alienation made without iſſue, his collateral heir ſhould not have inherited, becauſe he was not within the form of the gift, viz. heir of the body of the Donee. (f) Lands were given before the ſtatute in Frankmarriage, and the Donees had iſſue and died, and after, the iſſue died without iſſue, it was adjudged that his collateral iſſue ſhall not inherit, but the Donor ſhall re-enter. Mo note, that the heir in tail had no Fee ſimple abſolute at the Common Law though there were divers deſcents. (b) Vid. ſect.18. Brit.ca.36. fol.93. Pl. Com.235. 562. Shelleys Caſe, lib.1. fol. 103. (c) 44 E.3.3. 30 E.1. Formedon 66. 7 E. 3.6,7. 7 H.4.31.12 H.4.2. (d) 18 E.3.46. 18 Aſſ.p.3. 12 E.4.3. (f) 4 H.3. Formedon 34. 18 Aſſ.5.12 E.4.3. Pl. Com.247. b.18 E.2. tit. Formedon 58,59.

If lands had been given to a man and to his heirs males of his body, and he had iſſue two ſons, and the eldeſt had iſſue a daughter, the daughter was not inheritable to the Fee ſimple, but the younger ſon per formam Doni. And ſo if land had been given at the Common Law to a man and the heirs Females of his body and he had iſſue a ſon and a daughter, and died, the daughter ſhould have inherited this Fee ſimple at the Common Law, for the ſtatute of Donis conditionalibus createth no eſtate tail, but of ſuch an eſtate as was Fee ſimple at the Common Law and is deſcendible in ſuch form as it was at the Common Law. If the Donee in tail had iſſue before the ſtatute, and the iſſue had dyed without iſſue, the alienation of the Donee at the Common Law, having no iſſue at that time had not barred the Donor.

(g) If Donee in tail at the Common Law had aliened before any iſſue had, and after had iſſue, this alienation had barred the iſſue, becauſe he claimed a Fee ſimple. yet if that iſſue died without iſſue, the donor might re-enter for that he alioned before any iſſue at what time he had no power to alien to bar the poſſibility of the Donor. (h) But if Feme tenant in tail had taken husband, and had iſſue, and the husband and wife had aliened in Fee by deed before the ſtatute yet the iſſue might have had a Formedon in deſcender, for the alienation was not lawful: but otherwiſe it is, if it had been by fine. And theſe things though they ſeem ancient are neceſſary notwithſtanding to be known, aſwel for the knowledg of the Common Law, as for Annuities and ſuch like inheritances as cannot be intailed within the ſaid ſtatute, and therefore remain at the Common Law. (i) If the King before the ſtatute of Donis (g) 30 E.1. Formedon 65. Temps E.1. ibid. 62. 19 E.2. Formedon 61. Pl. Com.246. (h) 4 E.2. Formedon 30. (i) 6 E.3.56. Jo. of Eltham's caſe.

conditionalibus, had made a gift to a man, and to the heirs of his body begotten, the Donee Poſt prolem ſuſcitatam, might have alienedaſwel as in the caſe of a common perſon. (k) But if the Donee had no iſſue, and before the Statute had alienedwith Warranty, and died, and the Warranty had deſcended upon the King, this ſhould not have bound the King of his reverſion without aſſets: but otherwiſe it was in the caſe of a common perſon. (l) Of the other ſide, if lands had been given to the King and to the heirs of his body, he could not before iſſue have alienedin Fee, but only to have barred his iſſue as a common perſon might have done, but not have barred the reverſion, for that ſhould have been a wrong in the caſe of a Subject: and the Kings Prerogative cannot alter his caſe, nor make it greater than the Donor gave unto him: and it is a Maxim in Law, That the King can do no wrong. When all Eſtates were Fee ſimple, then were purchaſers ſure of their purchaſes, Farmors of their leaſes, Creditors of their debts, the King and Lords had their Eſcheats, Forfeitures, Wardſhips, and other profits of their Seigniories: and for theſe and other like caſes, by the wiſdom of the Common Law all Eſtates of inheritance were Fee ſimple, and what contentions and miſchiefs have crept into the quiet of the Law by theſe fettered inheritances, daily experience teacheth us. But ſee more of this matter in the aforeſaid Chapter of Warranty, Sect. 746.

(k) 45 Aſſ. p. 6.

(l) Pl. Com. 246. b.

Lib. 10. f. 38. in Port. caſe.

¶ *Common ley.* See for explication hereof, Sect. 170.

Doct. & Stud. lib. 2. cap. 55.

¶ *Come appiert per le reherſall de meſme leſtatute.* Here, by the authority of our Author, The rehearſal or preamble of a Statute is to be taken for truth, for it cannot be thought that a ſtatute that is made by authority of the whole Realm, as well of the King, as of the Lords Spiritual and Temporal, and of all the Commons, will recite a thing againſt the Truth.

¶ *Et ore per cel ſtatute tenant en taile eſt en 2. Manners,* ſc. *tenant en taile generall, & tenant en taile eſpeciall.*

This diviſion of an eſtate tail is perfect and ſound, For the membra dividentia, viz. general and ſpecial are converted properly with the thing defined, and they are proved by many Authorities of Law, and approved of all learned men, and ſo are all the diviſions thorow all his three Books, which the ſtudious and diligent Reader will obſerve. And how excellent and difficult a thing it is to divide rightly and properly, eſpecially in the law, the learned do know.

(r) 24 H. 8. tit. Feoffments all uſes 4. 27 H. 8. fo.

By this Statute the land is as it were appropriated to the Tenant in tail, and to the heirs of his body, and therefore (r) if an eſtate be made, either before or ſince the Statute of 27 H. 8. c. 10. to a man and the heirs of his body, either to the uſe of another and his heirs, or to the uſe of himſelf and his heirs, this limitation of uſe is utterly void. For before the ſaid Statute of 27 H. 8. he could not have executed the eſtate to the uſe, and ſo was it adjudged (ſ) in an Ejectione firmæ, between John Cowper Plaintiff, and Thomas Franklin, &c. Defendant.

(ſ) Paſch. 14. Ja. in the Kings Bench.

Sect. 14,15.

Vid. Sect. 1.

¶ *TErres*, Terra, in his general and legall ſignification (as hath been ſaid before) includeth not onely all kind of grounds, as meadow, paſture, wood, &c. but houſes and all edifices whatſoever. In a more reſtrained ſenſe it is taken for arable ground.

¶ *Tenements*, Tenementa. This is the only word which the ſaid Statute of W. 2. that created Eſtates tail, uſeth, and it includeth not only all corporate Inheritances, which are or may be holden, but alſo all Inheritances iſſuing out of any of

¶ TEnant en taile generall, eſt lou tres ou tenemts ſont dones a un hõe & a ſes heires de ſon corps engendres: En ceo caſe eſt dit generall taile, pur ceo q̃ quelcunqz feme q̃ tiel tenant eſpouſa (ſil avoit pluſors femes, & p̃ cheſcun de eux il ad iſſue) uncore cheſcun de les iſſues

TEnant in taile general, is where Lands or Tenements are given to a man, and to his heirs of his body begotten. In this caſe it is ſaid general tail, becauſe whatſoever woman that ſuch tenant taketh to wife (if he hath many wives and by every of them hath iſſue) yet every one of theſe iſſues by

poſ-

per poſſibilitie poit enheriter les tenements per force del done, pur ceo que chelcun tiel iſſue eſt de ſ̃ corps engendre.

possibility may inherit the Tenements by force of the gift; becauſe that every ſuch iſſue is of his body ingendred.

¶ EN̄ le maner eſt lou terres ou tenements ſont dones a un feme, & a les heires de ſa corps iſſuants, coment que el avoit divers barons, uncore iſſue que el poit aber per chelcun baron, poit enheriter come iſſue en le taile per force de tiel done, & pur ceo tielx dones ſont appelles general tailes.

IN the ſame manner it is where lands and Tenements are given to a woman, and to the heirs of her body, albeit that ſhe hath divers husbands; yet the iſſue which ſhe may have by every Husband may inherit as iſſue in taile by force of this gift. And therefore ſuch gifts are called general tailes.

thoſe inheritances, or concerning, or annexed to, or exerciſable within the ſame, though they lye not in tenure: therefore all theſe without queſtion may be entailed. As (t) Rents, Eſtovers, Commons, or other profits whatſoever granted out of land, or Uſes, Offices, Dignities, which concerne Lands or certain places may be entailed without the ſaid ſtatute, becauſe all theſe ſavour of the Realty. But if the grant be of an inheritance meer perſonal, or to be exerciſed about Chattels, and is not iſſuing out of land, nor concerning any land, or ſome certain place, ſuch inheritances cannot be entailed, becauſe they ſavour nothing of the realty. But examples will illuſtrate and make this learning clear.

(t) 7 E.3.363. 18 E.3.27. 7 H.6.8.32 H. 28.5 E. 4. 3. 1 H.7.28. 4 H.7.9. 1 H.5. 1 H.8. fol.3. Nevils caſe, lib. fol. 33,34. Pl. Com. in Manxels caſe, fol.2. & 3.

The Writ of Iſſue (u) was De libero tenemento, and made his pleint of the Office of the fourth part of the Serjeant of the Common Place, and the Writ adjudged good, and ſeeing that a man hath a Freehold, Liberum tenementum in it, by conſequent it may be intailed.

(u) 7 Aſſ.p.12. 7 E.6.1.

The Office of the keeping of the Church of our Lady of Lincoln, was intailed, and a Formedon there brought upon the gift of the Office by the iſſue in tail. The (x) Office of the Marſhal of England entailed. The (y) Office of one of the Chamberlains of the Exchequer intailed, 1 H.7.28. The Office of a Fosterſhip intailed, 4 H.7.10. 9.E.4.56. b. Charters intailed, 19 H.8.3. Uſe intailed. (z) Nomination to a Benefice intailed.

18 E.3.27. (x) 5 E.4.3. 10 E.4.14. (y) 11 E.4.1. 1 H.7.28. 4 H.7.10. 9 E.4. 526. 19 H.8.3. 1 H.5.1.

Alſo a name of dignity may be intailed within the Statute, (a) as Dukes, Marqueſſes, Earls, Viſcounts, and Barons, becauſe they be named of ſome County, Manor, Town, or Place. If the iſſue in tail (b) in a Formedon in the Deſcender be barred by a falſe verdict, his releaſe is no bar to his iſſue, albeit the action is at the Common Law.

(a) Lib.7. fol. 33, 34. Nevils caſe, 28 H.6. Lord Veſcyes caſe. (b) 14 Aſſ.2. 3 Eliz. Dyer 188.

The like Law is of a Writ of Error, 3 Eliz. Dyer, 188. If a gift in taile be made with Warranty, the Donee releaſes the Warranty, this ſhall not bind the iſſue in tail, for to all theſe caſes and the like the ſaid Statute doth extend. But if I grant to a man and to the heirs of his body to be Keeper of my Hounds, or Maſter of my Horſe, or to be my Faulconer, or ſuch like, with a fee therefore, yet theſe cannot be intailed within the ſaid Statute, forthat they be not iſſuing out of Tenements, nor annexed to, or exerciſable within, or concerning Lands or Tenements of Freehold or Inheritance, but concerning Chattels, and ſavour nothing of the Realty. And ſo it is if I by my deed for me, and my heirs grant an annuity to a man, and the heirs of his body, for that this only chargeth my perſon and concerneth no Land, nor ſavoureth of the Realty.

pl. Com. in Manxels caſe.

In all theſe caſes he hath a fee conditional, as they were before the ſtatute, and the Grantee by his grant or releaſe may bar his heir, as he might have done at the Common Law, for that in theſe caſes he is not reſtrained by the ſaid ſtatute.

¶ *Et a ſes heirs de ſon corps engendres.* In gifts in taile theſe words (heirs) are as neceſſary, as in Feoffments and Grants; for ſeeing every eſtate tail was a Fee ſimple at the Common Law, and at the Common Law no fee ſimple could be in Feoffments and Grants without theſe words (heirs) and that an eſtate in Fee tail is but a cut or reſtrained Fee. It followeth that in gifts in a mans life time, no Eſtate can be created without theſe words (heirs) unleſs it be in caſe of Frankmarriage, as hereafter ſhall be ſhewed. And where Littleton ſaith (heirs) yet (heir in the ſingular number in a ſpecial

case may create an Estate tail, as it appeareth by 39 Ass. p. 20. hereafter mentioned, And yet if a man give lands to A. & hæredibus de corpore suo, the remainder to B. in forma prædicta, this is a good Estate tail to B. for that in forma prædicta do include the other. If a man letteth lands to A. for life, the remainder to B. in tail, the remainder to C. in forma prædicta. this remainder is void for the incertainty. But if the remainder had been, the remainder to C. in eadem forma, this had been a good Estate tail for Idem semper proximo antecedenti refertur, If a man give lands or tenements to a man & semini suo, or exitibus vel prolibus de corpore suo, to a man and to his seed or to the issues or children of his body, he hath but an estate for life, for albeit that the statute provideth that Voluntas Donatoris secundum formam in charta doni sui manifestè expressam de cætero observetur, yet that will and intent must agree with the rules of Law. And of this opinion was our Author himself, as it appeared in his learned reading aforementioned upon this statute: where he holdeth if a man giveth land to a man & exitibus de corpore suo legitimè procreatis, or semini suo, he hath but an estate for life, for that there wanteth words of Inheritance.

39 Ass. p. 20.
20 H. 6. 35. 5 H. 4. 7. b.
14 H. 4. 15.

Vid. Shelleys case, lib. 1. f.

¶ *De son corps.* These words are not so strictly required, but that they may be expressed by words that amount to as much: for the example that the statute of W. 2. putteth, hath not these words (de corpore suo) but these words (hæredibus) viz. Cum aliquis dat terram suam alicui viro & ejus uxori & hæredibus de ipsis viro & muliere procreatis. If lands be given to B. (c) & hæredibus quos idem B. de prima uxore sua legitimè procrearet. This is a good estate in especial tail (albeit he hath no wife at that time) without these words (de corpore.) So it is (d) if lands be given to a man, and to his heirs which he shall beget of his wife: (e) or to a man & heredibus de carne suâ, or to a (f) man & hæredibus de se. In all these cases these be good estates in tail, and yet these words de corpore are omitted.

(c) 3 E. 3. tit. breve 743. 3 E. 5. tit. Estates.
(d) 12 H. 4. 2.
(e) 37 H. 6. 15.
(f) 5 H. 5, 6.

(g) 12 H. 4. 2. per Horton.

It is holden (g) by some opinion, that if there be grandfather, father, and son, and lands are given to the grandfather, and to his heirs begotten by the father. the father dieth, the grandfather dieth, the son is in as heir to the grandfather begotten upon the body of his father, and the wife of the grandfather in that case shall be endowed. But certain it is, that in some cases one shall have the land per formam doni that is not issue of the body of the Donee, which see Sect. 30.

¶ *Engendres.* This word may in many cases be omitted or expressed by the like, and yet the state in tail is good: as, Hæredibus de carne, hæredibus de se, hæred' quos sibi contigerit, &c. as is aforesaid, and where the word of Littleton is, ingendred, or begotten, procreatis, yet if the word be procreandis, or quos procreaverit, the estate in tail is good; and as procreatis shall extend to the issues begotten afterwards, so procreandis shall extend to the issues begotten before.

18 E. 2. tit. Bre. 836.
24 E. 3. 28.

Sect. 16.

¶ *Un home & sa feme.* (a) Then put the case that lands be given to a man and a woman unmarried, and the heires of their two bodies: for the apparant possibility to marry, they have an estate taile in them presently. (b) So it is where lands be given to the husband of A. and to the wife of B. and to the heirs of their bodies, they have presently an estate in tail, in respect of the possibility. If a feme sole doe enfeoffe a married man causa Matrimonii prælocuti, it is good for the possibility. But put the case that the premises and the Habendum be in other manner than Littleton hath put, and let us see

(a) 5 H. 7. 10 11 E. 3. Formedon 30. Pl. Com. 35.

(b) Lib. 1. fo. 120. Chudleys case, 40 Ass. pl. 13. 34 Ass. pl. 1. Fleta lib. 5. c. 34.

TEnant en taile especiall e lour fits ou Tenements sont dones a un home e a la feme, e a les heires de lour deux corps engendres, en tiel case nul poet inherit p force de le dit done, forsq̃ ceux q̃ sont ingendres perent eux deux. Et est appel le especiall Taile, pur ceo q̃ si la feme deby, e il prent auter feme, e ad issue, issue del se-

TEnant in tail especial is where Lands or Tenements are given to a man and to his wife, and to the heirs of their two bodies begotten; In this case none shall inherit by force of this gift, but those that be engendered betweene them two: and it is called especial taile, because if the wife dye, and he taketh another wife, & have issue, the

cond

tond feme ne ſerra jammes inheritable p force de tiel done, ne auxy liſſue del ſecond baron, ſi le pñ Baron devie.

iſſue of the ſecond wife ſhall not inherit by force of this gift, nor alſo the iſſue of the ſecond husband, if the firſt husband die.

what the Law is in theſe caſes. (c) As if a man in the premiſſes give lands to another and the heirs of his body, habendum to him and his heirs for ever. It hath been holden that in this caſe he hath an eſtate tail, and a fee ſimple expectant: And ſo (it is ſaid) vice verſa, if lands be given to a man and to his heirs in the premiſſes, habendum to him and to the heirs of his body, that he hath an eſtate tail, and a fee ſimple expectant. But vid. l. 8. fol. 154. b. other wiſe reſolved, ut patet ibi. (d) If lands be given to B. and to his heirs, to have and to hold to B. and to his heirs, if B. have heirs of his body, and if he dye without heirs of his body, that it ſhall revert to the Donor, this is adjudged an eſtate tail, and the reverſion in the Donor. (e) For, Voluntas donatoris in charta doni ſui manifeſtè expreſſa obſervetur; and therefore in the caſe next precedent, if theſe or the like words be added (and if he die without heirs of his body, that the lands ſhall revert to the Donor) that then the Habendum ſhall by authority of divers books be conſtrued upon the whole deed, to be a limitation or a declaration, what heirs are meant in the premiſſes, to inherit, and that in that caſe the reverſion is in the Donor.

(c) 21 H. 6. 7.

(d) 30 Aſſ. p. 47. 35 Aſſ. p. 14. 37 Aſſ. 15. 5 H. 5. 6.

(e) W. 2. ca. 21.

(f) If a man make a Charter of feoffment of an acre of land to A. and his heirs, and another deed of the ſame acre to A. and the heirs of his body, and deliver ſeiſin according to the form and effect of both deeds, in this caſe he cannot take a fee ſimple, only, as ſome hold, for that livery was made according to the deed in tail, as well as the Charter in fee, neither can the livery enure only to the deed of eſtate tail with a fee ſimple expectant, for that livery was made as well upon the deed in fee ſimple, as the deed in tail. Therefore others hold, That in that caſe it ſhall enure by moyeties, that is, to have an eſtate tail in the one moyety, with the fee ſimple expectant, and a fee ſimple in the other moyety: And ſo the livery ſhall work immediately upon both deeds.

(f) 2 H. 6. 25. 45 E. 3. 20.

Sect. 17.

¶ EM meſme le maner eſt lou tenements ſont dones per un home a un auter ove un Feme, oue eſt la file ou couſin al Donour en Frankmarriage, le quel doñe ad un enheritance per ceux parolx (frankmarriage) a ceo, annexe, coment que ne ſoit expreſſement dit, ou reherce en le done, teſtaſcavoir, que les Donees averont les tenemẽts a eux & a lour heires perenter eux deux engendres. Et ceo eſt dit eſpecial tail, pur ceo que liſſue del ſe-

¶ IN the ſame manner it is, where Tenements are given by one man to another, with a wife (which is the daughter or couſin to the giver) in frankmarriage, the which gift hath an enheritance by theſe words (frankmarriage) annexed unto it, although it be not expreſly ſaid or rehearſed in the gift (that is to ſay) that the Donees ſhall have the Tenements to them and to their heires between them two begotten. And this is called eſpecial taile, becauſe

¶ A *Un home one un feme.* Albeit the gift is made of the land to the man with his daughter, &c. yet is the gift good to them both in ſpecial tail, and therefore that of Stephen de la More, in (g) 5 E. 3. is very remarkable, where the caſe was, that Robert gave the reverſion of lands which Agnes his wife did hold for her life to Stephen de la More, Habendum poſt mortem dictæ Agnetis in liberum maritagium cum Johanna filia ejuſdem Roberti, and it is adjudged that it is a good eſtate tail: wherein three things are to be obſerved; *Firſt*, that Joane the daughter took with her husband an eſtate in eſpecial taile, albeit ſhe were named but under a cum, viz. cum Johanna, &c. 2. That that cum doth come after the Habendum, for that it is but all one ſentence. 3. That theſe words, in liberum Maritagium, do create an eſtate of inheritance in eſpecial taile as Littleton

Vid. ſect. 19. 20. 5 E. 3. 17.

(g) This caſe is vouched in Pl. Com. 158. to be in 4 E. 3. which being not found in that year it is there ſo left without any further reference, but you ſhall find it as above ſaid in 5 E. 3. 17.

tleton ſaith, Le Donee ad un inheritance per reaſon de ceux parolx (frankmarriage) a ceo annexe coment que ne ſoit expreſſement dit, &c.

cond feme ne poit inheriter, &c. the iſſue of the ſecond wife may not inherit.

W. 2. ca. 1.
19 E 3. tit. tail. 1.

But this had need of ſome interpretation, for if lands be given by theſe words (in frankmarriage) according to the rules of the Law, then do theſe words create an eſtate of inheritance in ſpecial tail: for the conſideration of marriage is in that caſe more favoured in Law than any other conſideration: But though the gift be in theſe words, yet if it be not conſonant to the rules of the Law in other things requiſite thereunto, there they create but an eſtate for life. And therefore to ſpeak once for all. Four things be incident to a frankmarriage: Firſt, that it be given for conſideration of marriage either to a man with a woman, or as ſome have held, to a woman with a man: For in (h) 6 E. 3. 33. in Peirs de Saltmarſh his caſe, a man gave land to his ſon in frankmarriage, and Fitz. N. B. 172. taketh the Law ſo alſo. And 7 E. 4. 12. per moyle againſt a new opinion in temps H. 8. Br. tit. Frankmarriage the former books being not remembred. Secondly, that the woman or man, that is the cauſe of the gift (i) be of the blood of the Donor, but it may be made as well after marriage as before, and it may be made with a widdow, &c. Thirdly, if the gift be made of ſuch a thing as lyeth in tenure, that the Donees hold of the Donor at the time of the eſtate in frankmarriage made. A rent ſervice (k) may be given in frankmarriage becauſe it may be holden. And ſo may a Rent charge or Rent ſeek as Fitz. N. B. holdeth, and it appeareth in our books that a Common was granted in frankmarriage. Fourthly, that the Donees ſhall hold fealty of the Donor till the fourth degree be paſt. And therefore if land be given to a woman, with a ſon of the Donor in frankmarriage, there paſſeth an inheritance, but if the Donee that is the cauſe of the gift be not of the blood of the Donor, then there paſſeth but an eſtate for life if libery be made. Alſo if (l) lands be given to a man with a woman of the blood of the Donor in liberum maritagium, the remainder in fee either to a ſtranger or to the Donees, they have no eſtate tail, becauſe there is no tenure of the Donor, but if (m) in that caſe, the remainder had been limited to another in tail, reſerving the reverſion in fee to the Donor, there the ſaid words (in liberum maritagium) create an inheritance, becauſe the Donees hold of the Donor. And this is the cauſe that it is holden, That a man cannot deviſe land in frankmarriage becauſe the Donee cannot hold of the Donor. And Ceſtny que uſe before the ſtatute of 27 H. 8. could not have made a gift in frankmarriage, becauſe the reverſion was in the Feoffees. (n) And if the Donor doth give lands in liberum maritagium reſerving a rent, this reſervation ſhall take no effect till the fourth degree be paſt, but the frankmarriage is good; for if the reſervation ſhould be good, then could not the Donees have an Eſtate tail for want of words of the heirs of their bodies.

(h) 6 E. 3. 33.
Fitz. N. B. 172.
7 E. 4. 12.
15 E. 2. Cui in vita. Sect. 24.
(i) 4 E. 3. 8.
31 E. 1. tail 30.
Bracton lib. 2. cap. 7.
(k) 22 R. 2. tit. deſcent. 50.
Fitz. N. B. 212.
9 H. 6. 35. b.
W. 2. cap. 1. ac.

(l) Temps H. 8. Br. Frankmar. 11. 13 E. 1. Formedon 63.
Vid. 32 E. 1. tail 25.
2 E. 2. Feoffment & faits. 9.
17 E. 3. 5. 2. 45 E. 3. 20.
(m) 20 E. 2. aid 174.
21 E. 3. Gard. 216.

(n) Bract. lib. 2. cap. 7.
32 E. 1. tail. 31.
13 H. 4. 74. 4 H. 6. 17.
26 Aſſ. 66. 31 E. 3. gar. 29.

¶ *En Frankmarriage.* Liberum Maritagium, Free marriage. Maritagium is taken for Fee tail, and dividith maritagium into liberum & ſervitio obligatum: and herewith agreeth Bracton (o) lib. 2. cap. 34. & 39. Maritagium eſt aut liberum aut ſervitio obligatum, & lib. 2. cap. 7. num. 3. & 4. Liberum maritagium dicitur, ubi Donator vult quod terra ſic data quieta ſit & libera ab omni ſeculari ſervitio. And ſo before Bracton, ſaid Glanvil, lib. 7. cap. 18. Maritagium autem aliud nominatur liberum, aliud ſervitio obnoxium; liberum dicitur maritagium quando aliquis liber homo aliquam partem terræ ſuæ dat cum aliqua muliere in maritagium, ita quod ab omni ſervitio terra illa ſit quieta, &c. And after both of them, Fleta that followeth them both, lib. 3. cap. 4. ſaith, Eſt autem quoddam maritagium liberum ab omni ſervitio ſolutum donatori vel ejus hæredi, &c. Et eſt ſimiliter maritagium ſervitio obligatum & oneratum, &c. And theſe words (in liberum maritagium) are ſuch words of art, and ſo neceſſarily required, as they cannot be expreſſed by words equipollent, or amounting to as much. As if a man give lands to a man with his daughter in connubio ſoluto ab omni ſervitio, &c. Per there paſſeth in this caſe but an eſtate for life, for ſeeing that theſe words (in liberum maritagium) create an eſtate of inheritance againſt the general rule of law, the law requireth that they ſhould be legally purſued. But then it may be demanded if a man had given lands at the Common Law, in libero maritagio, whether had the Donees a fee ſimple without theſe words (heirs) for that it appeareth by that which hath been ſaid before, that all gifts in tail were fee ſimple at the Common Law, and that the ſtatute of W. 2. did not create any eſtate in fee tail, but out of an eſtate in fee ſimple. To this it is anſwered, that theſe words (in liberum maritagium) did create an eſtate in fee ſimple at the Common Law: and it is holden in 31 E. 3. gard. 116. Per ceux parolx in frankmarriages les donees averont les terres a eux & a lour heirs parenter eux engendres, & ceo eſt dit eſpecial tail. But yet between Donees in Frankmarriage and other Donees in ſpecial tail there be many notable diverſities. If the King give land to a man and a woman, and the heirs of their two bodies, and the woman dye without iſſue, yet ſhall the man be tenant in tail apres poſſibilitie. But if the King give land to a man with a woman of his kindred in a frankmarriage, & the woman dieth without iſſue, the man in the Kings caſe ſhall not hold it for his life, becauſe the woman was the cauſe of the gift, but otherwiſe

(o) Bract. lib. 2. ca. 34. 39. & lib. 2. ca. 7. nu. 3 & 4. Glanvil. lib. 7. ca. 1. & ca. 18.

Fleta lib. 3. cap. 1.

30 E. 1. tit. Formedon 66. adjudg. acc.

31 E. 3. tit. Gard. 116. Mirror cap. 2. ſect. 15. acc.

9 H. 3. Dower, 202.

wiſe it is in the caſe of a common perſon. If lands be given to a man and a woman in eſpecial tail, and they are divorced cauſa præcontractus, both ſhall hold the lands for their lives. But in (p) caſe of frankmarriage, if they be ſo divorced, the woman ſhall enjoy the whole land, becauſe ſhe was the cauſe of the gift. If lands holden in Socage, (q) be given in eſpecial tail, and the Donees die, the iſſue being within the age of 14 years, (r) the next of kin of the part of the father, or of the part of the mother which can hap the cuſtody ſhall have it; but in caſe of frankmarriage, the heir of the part of the mother ſhall have it, becauſe, as it hath been ſaid, ſhe was the cauſe of the gift.

7 H.4.16.
(p) 13 E.3. tit. Aſſ. 19 E.3. Aſſ.83.
12 Aſſ. 2. 19. Aſſ. 2. 8 E. Aſſ.45.
(q) Pl. Com. Carrils caſe.
(r) 17 H.3. tit. Gard. 146. 27 E.3.79.

Sect. 18.

¶ ET nota, quod hoc verbum (Talliare) idem eſt quod ad quandam certitudinem ponere, vel ad quoddam certum hæreditamentum limitare. Et ꝓ eo q̄ ē limit & mis en certaine, quel iſſue enheritera per force de tiels dones, & come longement lenheritance endurera, il eſt appell' ē Latin, Feodum talliatum, i. hæreditas in quandam certitudinem limitata. Car ſi tenant in general tail morust ſans iſſue, l' Donor ou ſes heirs poient entrer cõe en lour reverſion.

AND note, that this word (*Talliare*) is the ſame as, To ſet to ſome certainty, or, to limit to ſome certain inheritance. And for that it is limited and put in certain, what iſſue ſhall inherit by force of ſuch gifts, and how long the inheritance ſhall endure, it is called in Latine, *Feodum talliatum, i. hæreditas in quandam certitudinem limitata.* For if tenant in general taile dieth without iſſue, the donor or his heirs may enter, as in their reverſion.

¶ *Et nota.* This, in our Author throughout his three Books, betokens ſome notable point of inſtruction worthy of more ſpecial obſervation, which is often (ſ) uſed by him, as you may perceive by the Sections noted in the margent.

(ſ) Sect. 18.37.42, 43.49.50. 64.72.89.90. 104. 108. 114. 116.147.158.161.1688.70.183 254.279. 346.387. 452.467. 618.619.637.642. 670.682. 684.711.717.719.738.

¶ *Feodum talliatum i. hæreditas in quandam certitudinem limitata.* Here our Author doth interpret what Feodum tallitaum is. Of all the eſtates taile moſt coarcted or reſtrained that I find in our Books, is the eſtate tail in 39 Aſſ. Pl. 20. where lands were given to a man and to his wife, and to one heir of their bodies lawfully begotten, and to one heir of the body of that heir only. This caſe being adjudged in the point is an exception (ſome ſay) out of the general rule put before by Littleton, Sect. 13. that all eſtates tails were Fee ſimple at the Common Law, for (ſay they) by this limitation (hæredi) in the ſingular number, the Donees had not had a Fee ſimple at the Common Law. Vide regiſtrum judiciale, fol. 6. a gift made to a man, & hæredi maſculo de corpore ſuo.

Weſt.2. cap.3. Pl. Com. 251.a.
39 Aſſ. Pl.20.
Sect.13.
Vide Pl. Com. fol.29.b.
Regiſt. Judic. fol.2.

Sect. 19.

¶ EN meſm̃ l' maner eſt del tenant in ſpecial taile, &c. Car en cheſcun done en le taile ſauns pluis ouſter dire, le reverſion del Fee ſimple eſt en le donor. Et les donees &

IN the ſame manner it is of the Tenant in eſpeciall Taile, &c. For in every gift in taile without more ſaying, the reverſion of the Fee ſimple is in the Donor. And the Donees and

¶ *En cheſcun done en tail ſans pluis ouſter dire, le reverſion del fee ſimple eſt en le donor.* This is wrought by the conſtruction of the Stat. of W. 2. cap. 1. which hath turned the Fee ſimple of the Donee into a particular eſtate of inheritance, and the poſſibility of the Donor to a reverſion in him expectant

expectant upon the eſtate tail, ſo as there be two inheritances of one land, yet this was doubted in our Books, (t) and there reſolved accordingly to Littleton. But I ſee no cauſe wherefore that point ſhould be drawn in queſtion, for at the ſame Seſſion of Parliament (in which the Statute de donis conditionalibus was made) viz. cap. 3. it is expreſſly ſaid; Vel per Donum, in quo reſervatur reverſio, ſo as by the judgment of the ſame Parliament a reverſion was ſetled in the Donor.

(t) 12 E. 4. 23. 5 H. 7. 14. Weſt. 2 cap. 13. Pl. Com. 247, 248. 251, 562. 2 E. 2. tit. recvit. 147. 33 H. 6. 27. 39 E. 3. 18. 45 E. 3. 20.

¶ *Le reverſion del fee ſimple eſt en le donor.* A reverſion is where the reſidue of the eſtate always doth continue in him that made the particular eſtate, or where the particular eſtate is derived out of his eſtate, as herein the caſe of Litt. Tenant in Fee ſimple, maketh gift in tail; ſo it is of a leaſe for life, or for years. If a man extend lands by force of a Statute Merchant. Staple. Recognizance or Elegit, he leaveth a reverſion in the Conuſor. But ſince Litleton wrote, the deſcription muſt be more large upon the Stat. of (a) 27 H. 8. for at this day, if a man ſeiſed of lands in fee, make a feoffment in fee, (and depart with his whole eſtate) and limit the uſe to his daughter for life, and after her deceaſe, to the uſe of his ſon, in tail, and after to the uſe of the right heirs of the Feoffor: In this caſe, albeit he departed with the whole fee ſimple by the feoffment, and limited no uſe to himſelf, yet hath he a reverſion: (b) for whenſoever the Anceſtor takes an eſtate for life, and after a limitation is made to his right heirs, the right heirs ſhall not be purchaſors. And here in this caſe when the limitation is to his right heirs, and right heir he cannot have during his life (for, non eſt hæres viventis) the Law doth create an uſe in him during his life, until the future uſe cometh in eſſe, and conſequently the right heirs cannot be purchaſors, and no diverſity when the Law creates the eſtate for life, and when the party. And all this was adjudged between (c) Fenwick and Mitford in the Kings Bench; and if the limitation had been to the uſe of himſelf for life, and after to the uſe of another in tail, and after to the uſe of his own right heirs, the reverſion of the fee had been in him, becauſe the uſe of the fee continued ever in him: and the Statute doth execute the poſſeſſion to the uſe in the ſame plight, quality, and degree, as the uſe was limited.

(a) 27 H. 8. cap. 10.

(b) 38 E. 3. 26. 27 E. 3. Page 118. 24 E. 3. 36. 40 E. 3.

(c) Tr. 31. Eliz. inter Fenwick & Mitford. 32 H. 8. grad. 93. 28 H. 8. Dier 8, 9, 10, &c. Buckenhams caſe. 5 Mary Dier 163.

(d) If a man make a gift in tail, of a leaſe for life, the remainder to his own right heirs, this remainder is void, and he hath a reverſion in him: for the Anceſtor during his life, beareth in his body (in judgment of Law) all his heirs, and therefore it is truly ſaid, that Hæres eſt pars anteceſſoris. And this appeareth in a common caſe, that if land be given to a man and his heirs, all his heirs are ſo totally in him, as he may give the lands to whom he will.

(d) 1 H. 5. 8. 4 H. 6. 20. 9 Eliz. Dier Bromleyes caſe.

(e) So it is if a man be ſeiſed of lands in fee, and by indenture make a leaſe for life, the mainder to the heirs males of his own body, this is a void remainder: for the Donor cannot make his own right heir a purchaſer of an eſtate tail, without departing of the whole Fee ſimple out of him: as if a man make a feoffment in fee to the uſe of himſelf for life, and then to the uſe of the heirs males of his body, this is a good eſtate tail executed in himſelf, and the limitation is good by way of uſe, becauſe it is raiſed out of the ſtate of the Feoffees, which the Feoffor departed with, and that is apparant, for a limitation of uſe to himſelf had without queſtion been good.

(e) Dier, 5 Mary 156. Greſwolds caſe adjudged. Bendlowes Serjeant in his report agreeth.

(f) If a man make a feoffment in fee to the uſe of himſelf in tail, and after to the uſe of Feoffee in fee, the Feoffee hath no reverſion, but in nature of a remainder, albeit the Feoffor have the eſtate in tail executed in him by the Statute, and the Feoffee is in by the Common Law, which is worthy of obſervation.

(f) 20 Eliz. Dier.

lour iſſues ſerront al Donor & a ſes heires autiels ſervices, come le Donor fait a ſon Seignior prochin a luy Paramount, forſprise les Donees in Frankmarriage, les queux tiendront quietment de chescun manner de ſervice, ſinon que ſoit per fealtie tanque le quart degrée ſoit paſſe, & apres ceo que le quart degrée ſoit paſſe liſſue en le cinqz degrée, & iſſint ouſter lauters des iſſues apres luy, tiendront del don ou ſes heirs come ils teignōt ouſter, cōe il & avātdit.

their iſſue ſhall do to the donor, and to his heirs the like ſervices, as the donor doth to his Lord next Paramount except the donees in Frankmarriage, who ſhall hold quietly from all manner of ſervice, (unleſs it be for fealty) until the fourth degree is paſt, and after the fourth degree is paſt, the iſſue in the fifth degree, and ſo forth the other iſſues after him, ſhall hold of the donor or of his heirs as they hold over, as before is ſaid.

To conclude this p int, (g) whoſoever is ſeiſed of land hath not only the eſtate of the land in him, but the right to take profits which is in nature of the uſe; and therefore when he makes a Feoffment in fee, without valuable conſideration to divers particular uſes, ſo much of the uſe, as he diſpoſeth not, is in him as his ancient uſe in point of reverter. As if a man be ſeiſed of two Acres the one holden by Knights-ſervice, by priority, and the other by Knights-ſervice holden by poſteriority, and maketh a feoffment in fee of both Acres, to the uſe of himſelf and his heirs, the old uſe continued in him, and the priority and poſteriority remain. So it is of lands of part of the mother, the uſe ſhall go to the heir of the part of the mother, which could not be, if it were not the old uſe, but a thing newly created: the like law of lands, of the cuſtom of Borough-engliſh, Gavelkind, &c.

(g) 13 H.7.6. 28 H.8. Dyer 12.

5 E.4.7. Lib.1.76. 84,85.100,&c. Chudley. Lib.2. 56, 57, 58. 77,78. Lib.4.22. Lib. 6.34.43.

¶ *Les dones, & lour iſſues ferront al donor & a ſes heires autiels ſervices come le donor fait a ſon Seignior procheine a luy paramount.* The reaſon of this is that when by conſtruction of the ſaid Statute, there was a reverſion ſeiſed in the Donor, for that the Donee had an eſtate of inheritance, the Judges reſolved, that he ſhould hold of his Donor, as his Donor held over: as if the Tenant had made a Feoffment in Fee at the Common Law, the Feoffee ſhould have holden of the Feoffor as he held over, and before the Statute of W. 2. the Donee had holden of the Donor as of his perſon, and now of him as of his reverſion: but if a man make a leaſe for life, or years, and reſerve nothing, he ſhall have fealty only, and no rent, though the Leſſor hold over by rent, &c. And this that Littleton ſaith, is regularly true, if the Donor maketh no ſpecial reſervation, for then the ſpecial reſervation excludes the tenure which the Law would create. As if Tenant by Knights-ſervice maketh a gift in tail, reſerving fealty and rent; the Donee ſhall hold in Socage, by fealty and rent, and not by Knights-ſervice. But if a man hold land of the King in Grand Serjeanty and maketh a gift in tail generally, in this caſe the Donee ſhall not hold of the Donor by Grand Serjeanty, becauſe no man can hold by Grand Serjeanty, but of the King only, as hereafter ſhall be ſaid; and therefore ſeeing Grand Serjeanty doth include Knights-ſervice, he ſhall in that caſe hold of the Donor by Knights-ſervice. If a man ſeiſed of land in the right of his wife holden by Knights-ſervice, giveth the ſame lands in tail generally, the Donee ſhall not hold of him by Knights-ſervice, becauſe his wife held the land, and he had nothing but in her right. And in that caſe the Baron hath gained a new reverſion by wrong, and therefore ſuch a Donee ſhall do fealty only.

A. ſeiſed of two acres of land, holdeth the one of B. by Knights-ſervice, & twelve pence rent, and the other of C. in Socage, and one penny rent, and makes a gift in tail of both acres without any expreſs reſervation of any tenure: In this caſe the Donor hath but one reverſion. And yet he ſhall make ſeveral avowries, becauſe there be ſeveral tenures created by law in reſpect of the ſeveral tenures over: and the avowry is made in reſpect of the tenures.

Lord, Meſne and Tenant, the Tenant holdeth by four pence, and the Meſne by twelve pence, the Tenant makes a gift in tail, without reſerving any thing, by reaſon whereof he holdeth by four pence in reſpect of the tenure over. Afterwards the reverſion eſcheat, now ſhall the Donee hold by twelve pence, for the Meſnalty which was four pence is extinct, and the Law reſerved the tenure upon the gift in tail, in reſpect of the Meſnalty, and when the Meſnalty is extinct, the former rent between the Donor and Donee is extinct alſo, and then by the ſame reaſon that the Donee ſhall take advantage, if the Donor by releaſe or confirmation had holden by leſſer Services, by the ſame reaſon he ſhall be prejudiced, when he holdeth by greater ſervices.

49 E.3.19.

¶ *Forſpriſe les Donees en Frankmarriage.* It is to be underſtood, that although land be given in liberum maritagium, in free marriage generally, yet firſt the law doth make a limitation of this word (free) viz. till the fourth degree be paſt, for the reaſon that our Author here yieldeth. And 2. albeit it be free marriage, yet the Donees and their iſſues until the fourth degree be paſt, ſhall do fealty, for that is incident to every tenure (except Frankalmoigne) and cannot be ſeparated from it; and therefore the Donees and their iſſues ſhall hold it as freely, till the fourth degree be paſt, as the Donor can make it. See more of this in the Chapter of Frankalmoigne.

Bracton lib.2. fol.21. Britton cap. 119. Fleta lib.3. cap.11. & lib.6. cap. 2. Vide ſect.17.20.

Sect. 20.

¶ Et les degrees en Frankmariage ſerront accõpts en tiel manner, ſ. de

And the degrees in frankmarriage ſhall be accounted in this manner, *viz.* from

¶ Where Littleton ſaith, (a) that the Donees in Frankmarriage ſhall hold by fealty only until the fourth degree

(a) Vide ſect.17.19.138.268. 269. 271.733.

degree be paſt, and then the iſſue in the fifth degree ſhall hold of the Donor as the Donor holdeth over, (b) Vide Bracton ubi ſupra, ita quod ille cui terra ſic data fuit, nullum inde faciat ſervitium uſque ad tertium hæredem & uſque quartum gradum, ita quod tertius hæres ſit incluſus. And herewith alſo agreeth Fleta ubi ſupra. And the (c) learning of Degrees ſet out in the Civil and Canon Law (wherein I find ſome difference) is worth the knowledge, to the end that Littleton and the law in this caſe may the better be underſtood, which I will divide into certain rules: whereof the firſt is, That a perſon added to a perſon in the line of Conſanguinity maketh a degree. And it is to be underſtood, that a line is threefold, viz. the line aſcending, deſcending, and collateral. And firſt for example of the aſcending line, take the Son and add the Father, and it is one degree aſcending: add the Grandfather to the Father, and it is a ſecond degree aſcending.

(b) Glanvil lib. 7. cap. 18. Bract. lib. 2. fol. 21. Britton cap. 119. Fleta lib. 3. cap. 11. & lib. 6. cap. 2.

(c) Vide 10 E. 3. tit. avowry 157. 31 E. 3. ceſſavit. 22. 31 E. 3. gard. 116. 21 H. 7. 30.

1. Rule.

2. So as how many perſons there be, take away one, and you have the number of degrees. If there be four perſons, it is the third degree, if five the fourth: for one muſt exceed, and then you have the degree. Likewiſe by the deſcending take the Father, and add the Son, and it is one degree; then take the Son and add the Grandchild, and it is the ſecond degree, and ſo likewiſe further. Wherein obſerve, that the Father, Son and Grandchild, albeit there are three perſons, yet they make but two degrees, becauſe (as it hath been ſaid) one muſt exceed for making a degree.

2.

3. It is to be noted, that in every line the perſon muſt be reckoned from whom the computation is made. And there is no difference between the Canon and Civil Law in the aſcending and deſcending line: for thoſe whom the Civilians do reckon in the ſecond degree, the Canoniſts do reckon in the firſt; and thoſe whom they place in the fourth, theſe place in

3.

le donor a les donees en frankmarriage, le primer degree, pur ceo q̄ la feme que eſt un des donees covient eſtre file, ſoer, ou auter couſin a le donor. Et de les donees tanque a lour iſſue il ſerra accompt le ſecond degree, & de lour iſſue tanque a ſon iſſue, le tierce degree, & iſſint ouſter, &c. Et la cauſe eſt, pur ceo que apres cheſcun tiel done les iſſues queux veignoñ de le donor, & les iſſues queux veignont de les donees apres le quart degree paſſe de ambideux parties en tiel forme deſſ accompt, poyent enter eux per la ley de ſaint Egliſe entermarry. Et que le donee en Frankmarriage ſerra dit le prime degree de les quart degrees home poit beier en un plee ſur un breve de Droit de Garde P. 21 E. 3. Lou le Pl. counta, que ſon treſaiel fuit ſeiſie de cert terre, &c. & ceo tenuſt dun autre per ſervice de chivaler, &c. quel dona la terre a un Rafe Holland obeiſq̄ ſa ſoer en Frankmarriage, &c.

the Donor to the Donees in Frankmarriage the firſt degree, becauſe the wife, that is one of the donees, ought to be daughter, ſiſter, or other coſin to the donor, & from the donees unto their iſſue ſhall be accounted the ſecond degree, & from their iſſue unto their iſſue the third degree, and ſo forth. And the reaſon is, becauſe that after every ſuch gift, the iſſues of the Donor, and the iſſues of the Donees, after the fourth degree paſt of both parties in ſuch form to be accounted, may by the Law of the holy Church, entermarry. And, that the Donee in Frankmarriage ſhall be ſaid to be the firſt degree of the four degrees, a man may ſee in a plea upon a Writ of Right of Ward, P. 21 E. 3. where the Pl. pleadeth, that his great Grandfather was ſeiſed of certain lands, &c. and held the ſame of another by Knight-ſervice, &c. who gave the land to one *Ralph Holland*, with his ſiſter in Frankmarriage, &c.

in the ſecond. Therefore if we will know in what degree two of kindred do ſtand according to the Civil Law; we muſt begin our reckoning from one by aſcending to the perſon from whom both are branched, and then by deſcending to the other to whom we do count, and it will appear in what degree they are. For example, In brothers and ſiſters ſons, take one of them and aſcend to his father, there is one degree from the father to the grandfather, that is the ſecond degree; then deſcend from the grandfather to his ſon, that is the third degree; then from his ſon to his ſon, that is the fourth. But by the Common Law there is another computation, for the Canoniſts do ever begin from the ſtock, namely, from the perſon of whom they do deſcend; of whoſe diſtance the queſtion is; For example, if the queſtion be, In what degree the ſons of two brothers ſtand by the Canon Law? we muſt begin from the grandfather, and deſcend to one ſon, that is one degree; then deſcend to his ſon, that is another degree; then deſcend again from the grandfather to his other ſon, that is one degree; then deſcend to his ſon, that is a ſecond degree: ſo in what degree either of them are diſtant from the common ſtock, in the ſame degree they are diſtant between themſelves: And if they be not equally diſtant, then we muſt obſerve another rule. In what degree the moſt remote is diſtant from the common ſtock, in the ſame degree they are diſtant between themſelves, and ſo the moſt remote maketh the degree. And albeit the Donee be a Couſin in the third or fourth degree from the Donor, yet in this computation it maketh the firſt degree: Gradus dicitur à gradiendo, quia gradiendo aſcenditur & deſcenditur. And thus much of the Civil and Canon Law is neceſſary to the knowledge of the Common Law in this point: And herewith agreeth our Author in the words following.

¶ *Les iſſues queux veignont de le donor, & les iſſues queux veignont de les donees apres le* 4. *degree paſſe dambideux parties in tiel forme deſte account poient enter eux per le Ley de Saint Eſgliſe entermarrier.* (De Saint Eſgliſe) (d) So as hereby it appeareth, That the computation of the degrees in this caſe, muſt be according to the Canon Law. But it is neceſſary to be known concerning marriages between perſons of kindred one to another, that it is enacted (e) by the Statute of 32 H. 8. that no reſervation or prohibition (Gods Law except) ſhall trouble or impeach any marriage without the Levitical degrees.

(d) Brit. cap. 119. Accord. Flet. lib. 3. cap. 11. & lib. 6. c. 2.
(e) 32 H. 8. cap. 38.

The caſe vouched by Littleton in 31 E. 3. you ſhall find abridged in Fitzh. tit. grad. 116. And albeit this year of 31 E. 3. was never in print till Fitzherbert did abridge it and publiſh it in print anno 11 H. 8. and goeth under the name of broken years; yet here it appeareth by our Author, that the ſame is of authority in Law, as hereafter alſo in other places ſhall be obſerved.

Sect. 21.

¶ Et touts ceux Tailes avantdits ſont ſpecifies en le dit eſtatute de W. 2. Auxy ſont divers auks eſtates en le taile, coment q̄ ne ſont ſpecifies per expreſſe parols in le dit eſtatute, mes ils ſont priſes per le equity de le dit Statute. Sicome Terres ſont dones a un home & a ſes heires males de ſon corps engendres, en

And all theſe Entailes aforeſaid be ſpecified in the ſaid Statute of *W.* 2. Alſo there be divers other eſtates in taile, though they be not by expreſſe words ſpecified in the ſaid Statute, but they are taken by the equity of the ſame Statute. As if lands be given to a man, and to his heirs males of his body begotten; in this caſe his iſſue male ſhall

¶ *Et touts ceux Tailes avauntdits ſont ſpecifies en le dit Statute de Weſtminſter.* 2. And ſo it appeareth by the ſaid Statute. Auxy ſont divers auters eſtates en le taile, &c. And herewith agreeth, Carbonels Caſe, 33 Edw. 3. titulo Taile 5.

That the caſes of the ſtatute are ſet down but for examples of eſtates tail, general and ſpecial, and not to exclude other eſtates taile. 3 E. 3. 32. 18. Aſſ. p. 5. 18 E. 3. 46. 1. Mar. Dyer 46. Pl. Com. Seignior Barkleys caſe, fol. 251. For, Exempla illuſtrant, non reſtringunt legem.

3 E. 3. 32. 18 E. 3. 46. 18 Aſſ. p. 5. 1 Mar. Dyer 46. Pl. Com. 251.

¶ *Equity*

¶ *Equity* is a conſtruction made by the Judges, that caſes out of the letter of a Statute, yet being within the ſame miſchief, or cauſe of the making of the ſame, ſhall be within the ſame remedy that that Statute provideth: And the reaſon hereof is, for that the Law-maker could not poſſibly ſet down all caſes in expreſſe terms, Æquitas eſt convenientia rerum quæ cuncta cœquiparat, & quæ in paribus rationibus paria jura & judicia deſiderat. And again, Æquitas eſt perfecta quædam ratio, quæ jus ſcriptum interpretatur & emendat, nulli ſcriptura comprehenſa, ſed ſolum in vera ratione conſiſtens. Æquitas eſt quaſi æqualitas: Bonus Judex ſecundum æquum & bonum judicat, & æquitatem ſtricto juri præfert. Et jus reſpicit æquitatem.

tiel caſe ſ̃ iſſue male inherita, & le iſſue female ñ unqꝫ enherita pas, uncore in l's auks tailes avantdits auterment eſt.

inherit, and the iſſue female ſhall never inherit; and yet in the other entailes aforeſaid, it is otherwiſe.

Bract. lib.4. fol.186.
(b) 18. Aſſ.p.5. 18 E.3.46. 33 E.3.tit. Tail 5. 3 E.3.32. Pl. Com. Seigniour Barkleys caſe. 1 Mar. Dyer 46. Vide Sect.24.

¶ *Si come terres ſont done a un home & ales* (b) *heires males de ſon corps engendres, en tiel caſe ſon iſſue male inheritera, & liſſue female ne unques inheritera, &c.* This ſhall be explained afterwards, Sect. 24.

Sect. 22, & 23.

¶ Theſe two Sections, or any thing therein, do need no explanation, in reſpect they ſhall be alſo explained hereafter in the next Section, ſaving only theſe words; (queux doient inheriter) are very obſervable, for they imply a diverſity betwæn a deſcent & a purchaſe, For when a man giveth lands to a man and his heirs females of his body, and dieth, having iſſue a ſon and a daughter, the daughter ſhall inherit; for the will of the Donor (the Statute working with it) ſhall be obſerved. But in caſe (g) of a purchaſe, it is otherwiſe: For if A. have iſſue a ſon and a daughter, and a leaſe for life be made the remainder to the heirs females of the body of A: A. dieth, the heir female can take nothing, becauſe ſhe is not heir; for ſhe muſt be both heir and heir female, which ſhe is not, becauſe the brother is heir, and therefore the will of the giver cannot be obſerved, becauſe here is no gift, and therefore the Statute cannot work thereupon. And ſo it is if a man hath a ſonne and a daughter and dieth, and lands be given to the daughter, and the heires females of the body of her father, the daughter ſhall take

(g) 9 H.6.24. 21 H.6. 13,14. 7 H.8. Br. tit. Done 42. Tit. noime, 1. & 40. Dyer. 23 El.374 (Shelleys caſe, lib.1. 10.

¶ Mm̃ le manner eſt, ſi trẽs ou tenements ſoient dones a un home & a ſes hẽrs females de ſon corps engendres, en tiel caſe ſon iſſue female luy inheritera p force & forme de le dit done, & nemy iſſue male, pur ceo que en tiels caſes de dones faits en le tail, queux doient enheriter, & qux nemy la volunt ỻ donor ſerr obſerve.

IN the ſame manner it is, if Lands or Tenements be given to a man, and to his heirs females of his body begotten; In this caſe his iſſue female ſhall inherit by force and forme of the ſaid gift, and not his iſſue male. For in ſuch caſes of gifts in taile, the will of the Donor ought to be obſerved, who ought to inherit, and who not.

¶ Et en le caſe q terres ou tenements ſont dones a un home, & a ſes heirs males d̃ ſ̃ corps iſſuants, & il ad iſſue deux fils, & deby, & leign filz entra come hẽ male, & ad iſſue file & deby, ſ̃ fre aña la tẽ, & nemy la file, pur

AND in caſe where lands or tenements be given to a man, and to the heirs of his body, and he hath iſſue two ſons, and dieth, and the eldeſt ſon enter as heir male, and hath iſſue a daughter, and dieth; his brother ſhall have the land, and

ceo que le frere eſt heire male. Mes autrement ſerra de autres tailes que ſont ſpecifies en le dit Statute.

not the daughter, for that the brother is heir male. But otherwiſe it is in the other entails, which are ſpecified in the ſaid Statute.

nothing but an eſtate for life, becauſe there is no ſuch perſon ſhe being not heir. But where a gift is made to a man, and to the heirs female of his body, there the Donee being the firſt taker is capable by purchaſe, and the heir female by deſcent, ſecundum formam doni: and therefore Littleton purpoſely adds theſe words, Queux doient inheriter.

Sect. 24.

¶ Auxy ſi terres ſoient dones a un hõe, & a les heires males õ ſon corps engendres & il ad iſſue file, ql ad iſſue fils & deby, & puis apres le donee deby, & ceſt cale le fils de la file ne inheritera paſſe p force de le taile, pur ceo que quecunque que ſerra inherit per force dun done en le taile fait as heires males, covient conveyer ſon diſcent tout per les heires males. Mes en tiel cale le Donor poet entrer pur ceo q̃ le donee eſt mort ſans iſſue male en la Ley, entaunt que le iſſue del file ne poet conveyer a luy meſme le diſcent per heire male.

ALſo if lands be given to a man and to the heirs males of his body and he hath iſſue a daughter, who hath iſſue a ſon, and dieth, and after the donee dy: In this caſe, the ſon of the daughter ſhall not inherit by force of the intail, becauſe whoſoever ſhall inherit by force of a gift in tail made to the heires males, ought to convey his deſcent wholly by the heirs males. Alſo in this caſe the Donor may enter, for that the donee is dead without iſſue male in the law, inſomuch as the iſſue of the daughter cannot convey to himſelf the deſcent by an heir male.

¶ *Quecunq; ſerra enheriter per force dun done en Taile, &c.* Vide Tr. (h) 28 H. 6. tit. Deviſe 18. (which is not in the book at large, but written verbatim out of Statham.) If a man deviſe lands to a man, and to the heirs males of his body, & hath iſſue a daughter, which hath iſſue a ſon, this ſon ſhall be inheritable; and notwithſtanding in a gift in tail the Law is otherwiſe, and that by the opinion of all the Judges in the Exchequer Chamber. But I hold this caſe to be ill reported, unleſs you will referr the opinion of the Judges to the gift in tail laſt mentioned. For firſt, albeit a Deviſe may create an Inheritance by other words than a gift can, yet cannot a Deviſe direct an inheritance to deſcend againſt the rule of Law. Secondly, there is no intent of the Deviſor appearing, that the ſon of the daughter ſhould againſt the rule of Law inherit, & the Statute provideth, that Voluntas Donatoris, &c. obſervetur. And I have heard this caſe often denied to be Law both in the Kings Bench, and in the Common Pleas, vid. Pl. Comment. 414. b. And ſo it is

Vide ſect. 719.
(h) 1 H. 6. 24. 11 H. 6. 13, 14. 28 H. 6. tit. Deviſe 18. Statham tit. Deviſe. Pl. Com. in Scholaſt. caſe 414. b. 20 H. 6. 43. 37 H. 8. Br. tit. Done & Rem. 61. tit. Noſme 1. & 40.

(i) mutatis mutandis, when a gift in tail is made to a man, and to his heirs females of his body, and he hath iſſue a ſon, who hath iſſue a daughter, this daughter ſhall never inherit, becauſe ſhe muſt convey by deſcent from females. And for the reaſon hereof ſee a notable caſe in 15 E. 2. tit. Corone 385. where it is adjudged (as before it had been.) That the ſon of a female ſhould have an appeal of the death of a Couſin, and yet the daughter her ſelf ſhould never have had it. But there it is agreed, that the ſon of a female (k) in a Libertate probanda, ſhould be no witneſs or proof againſt the iſſue of the male. And the reaſon of this diverſity is very obſervable: for by the Common Law the female might have had an appeal as heir to any of

(i) 11 H. 6. 13.
15 E. 2. tit. Cor. 386.
(k) Mirror c. 2. ſect. 7. vide Glanvil lib. 14. cap. 3.